

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 10,541
JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

CATHERENE E. WELLS and JOSEPH G. WELLS
Appellants,

vs.

GRAND UNION EQUIPMENT COMPANY, a corporation,
Appellee.

Appeal from the United States District Court
for the District of Columbia

*United States Court of Appeals
For the
District of Columbia Circuit*

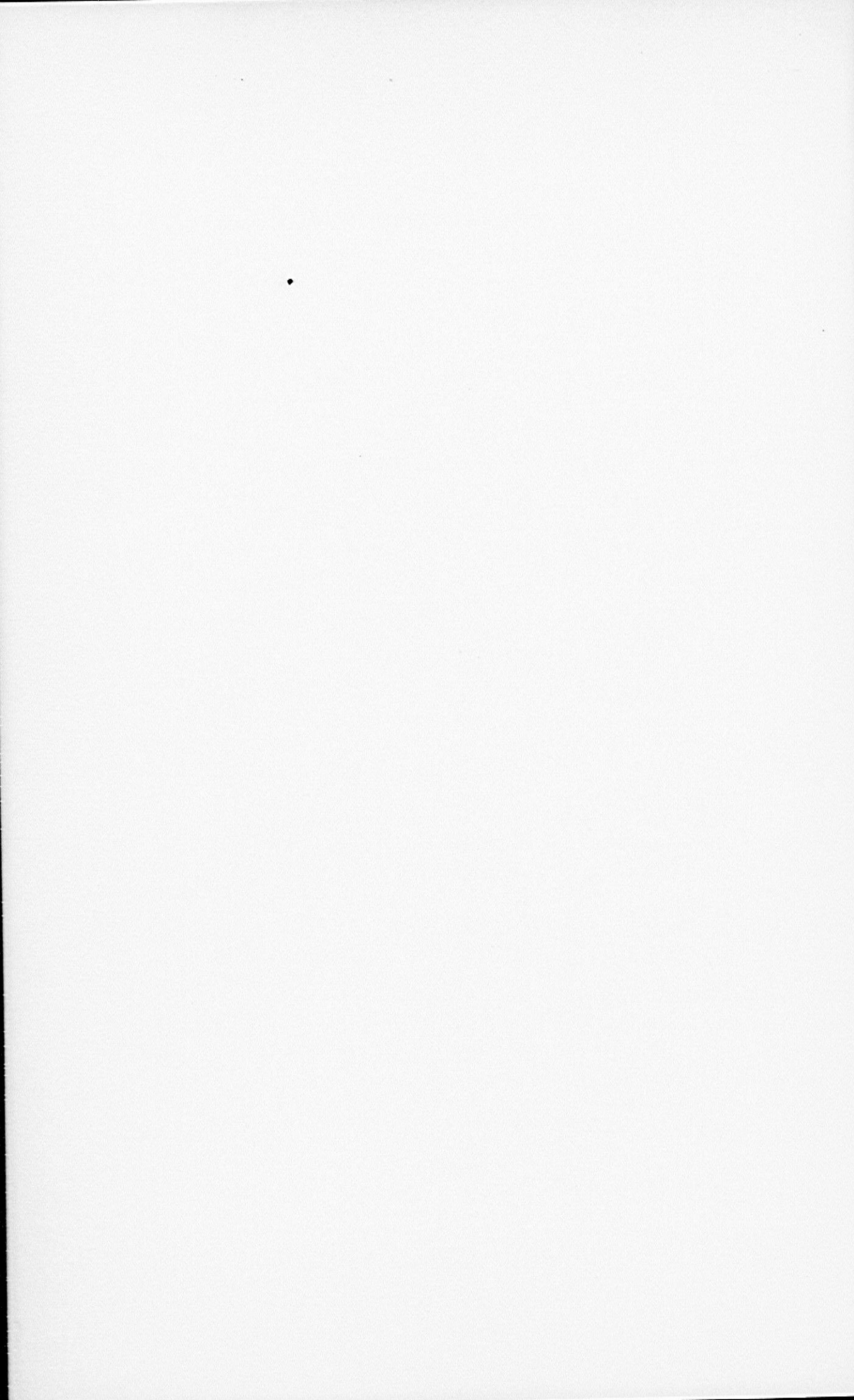
FILED MAR 27 1950

Joseph W. Stewart
CLERK



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vs.

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Appellee.

**Appeal from the United States District Court
for the District of Columbia**

JOINT APPENDIX

188 Filed Apr 14 1948 Harry M. Hull, Clerk

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

CATHERENE E. WELLS and JOSEPH G. WELLS,
1702 West Virginia Avenue, N. E.,
Washington, D. C.

Plaintiffs

vs.

GRAND UNION EQUIPMENT COMPANY,
a corporation

1401 - 14th Street, N. W.,
Washington, D. C.

and

ROBERT McLEAN,
1233 Girard Street, N. W.,
Washington, D. C.

Defendants

Civil Action No. 1559-'48

Complaint for Damages for Personal Injuries

1. The amount in controversy in this case exceeds \$3,000 and jurisdiction is granted to this court by Section 301, Title 11, District of Columbia Code 1940. Plaintiffs are adult citizens of the United States and residents of the District of Columbia. Plaintiff Catherine E. Wells is the wife of plaintiff Joseph G. Wells.

2. Defendant Grand Union Equipment Company is a corporation doing business at and within the District of Columbia and maintaining an office at 1401 - 14th Street, N. W., in said District.

3. On or about May 29, 1947, the plaintiff, Catherine E. Wells, was operating an automobile owned by the plaintiff, Joseph G. Wells.

4. On said date, the defendant, Robert McLean, was operating a motor vehicle, to wit, a truck, owned by the de-

fendant, Grand Union Equipment Company, Inc., on and over the streets of the District of Columbia by and with the consent of said defendant, Grand Union Equipment Company. At the intersection of 3rd Street and E Street, S. E., in the District of Columbia, the defendants negligently drove the said motor vehicle against the automobile then and there being operated by the plaintiff, Catherine E. Wells.

189 5. As a result of the negligence of the defendants as aforesaid, the plaintiff, Catherine E. Wells, was thrown from the said automobile and suffered great and severe injuries including shock, laceration, contusion whereby she, being then pregnant, suffered a miscarriage and injuries of a permanent character and was, and will in the future be, prevented from transacting her business and carrying on her normal duties, suffered, and will in the future suffer, great pain of body and mind. The automobile owned by the plaintiff, Joseph G. Wells, was damaged in the amount of \$450.00; said plaintiff was caused and will in the future be caused to expend monies and to incur expenses for medical attention and hospitalization on behalf of his wife, and was caused to lose and will in the future lose the services of said wife.

WHEREFORE, plaintiffs demand judgment

1. For the plaintiff, Catherine E. Wells, in the sum of \$25,000
2. For the plaintiff, Joseph G. Wells, in the sum of \$15,000
3. For the costs of this action.

BERUEFFY & SMOLLAR

By: /s/ Carl W. Berueffy

1625 K Street, N. W.

Washington, D. C.

Attorneys for Plaintiffs

* * * *

190 Filed Apr 29 1948 Harry M. Hull, Clerk

*Answer of Defendant, Grand Union Equipment
Company, a Corporation, to Complaint
for Personal Injuries*

First Defense

The above named defendant, Grand Union Equipment Company, a Corporation, admits the allegations concerning the jurisdiction of the Court; it is without knowledge as to the marital status of the parties; it admits the allegations contained in paragraph two of the complaint; it admits the allegations contained in paragraph three of the complaint; it admits that the other defendant was operating its truck, and that an accident occurred at the time and place alleged, with an automobile operated by the female plaintiff; it is without information or belief as to personal injuries, or financial losses sustained by the plaintiffs, and can neither admit nor deny the allegations with respect thereto. It denies all other allegations.

Second Defense

Further answering the complaint this defendant states that the accident of which the plaintiffs complain
191 was contributed to by the negligence of the female plaintiff.

/s/ Richard W. Galiher
Richard W. Galiher
/s/ Wm. E. Stewart, Jr.
William E. Stewart, Jr.,
Attorneys for above-
named defendant,
Woodward Bldg.

* * * *

193 Filed Dec 2 1949 Harry M. Hull, Clerk

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE
DISTRICT OF COLUMBIA

Catherine E. Wells and Joseph G. Wells
Plaintiffs.

vs.

Grand Union Equipment Co.
Defendant.

Civil No. 1559-48

Verdict and Judgment

This cause having come on for hearing on the 2nd day of December, 1949, before the Court and a jury of good and lawful persons of this district, to wit:

Helen G. Griffin
Edwin K. Sullivan
Myrtle L. Yost
Wm. F. Duchsler, Sr.
Wm. H. White
Clyde B. Inscoc

Clinton H. Bryant
Thos. P. Ricketts
Wm. E. McNally
Dorothy B. Taylor
Chas. F. Jenkins
Thos. F. Matthews

who, after having been duly sworn to well and truly try the issues between *Catherine E. Wells*, plaintiff and *Grand Union Equipment Co.*, defendant and after this cause is heard and given to the jury in charge, they upon their oath say this 2nd day of December, 1949, that they find for the defendant against said plaintiff.

WHEREFORE, it is adjudged that said plaintiff take nothing by this action, that said defendant go hence without day, be for nothing held and recover of plaintiff his costs of defense.

Harry M. Hull, Clerk
By /s/ Irene B. Burroughs,
Clerk

By direction of
Justice F. Dickinson Letts

* * *

194 Filed Dec 2 1949 Harry M. Hull, Clerk

Verdict and Judgment

This cause having come on for hearing on the 2nd day of December, 1949, before the Court and a jury of good and lawful persons of this district, to wit:

<i>Helen G. Griffin</i>	<i>Clinton H. Bryant</i>
<i>Edwin K. Sullivan</i>	<i>Thos. P. Ricketts</i>
<i>Myrtle L. Yost</i>	<i>Wm. E. McNally</i>
<i>Wm. F. Duchsler, Sr.</i>	<i>Dorothy B. Taylor</i>
<i>Wm. H. White</i>	<i>Chas. F. Jenkins</i>
<i>Clyde B. Inscoe</i>	<i>Thos. F. Matthews</i>

who, after having been duly sworn to well and truly try the issues between *Joseph G. Wells*, plaintiff and *Grand Union Equipment Co.*, defendant and after this cause is heard and given to the jury in charge, they upon their oath say this 2nd day of December, 1949, that they find for the defendant against said plaintiff by direction of the Court

WHEREFORE, it is adjudged that said plaintiff take nothing by this action, that said defendant go hence without day, be for nothing held and recover of plaintiff his costs of defense.

Harry M. Hull, Clerk,
By /s/ Irene B. Burroughs,
Deputy Clerk

By direction of
Justice *F. Dickinson Letts*

* * *

195 Filed Dec 9 1949 Harry M. Hull, Clerk

Motion for New Trial

Come now the plaintiffs above named, by their counsel herein, and respectfully move the Court to set aside the

verdict and judgment heretofore entered in this case and to grant the plaintiffs a new trial. As grounds for said motion, plaintiffs respectfully show the Court:

I

The verdict of the jury is contrary to the manifest weight of the testimony. The undisputed physical facts as shown by the testimony demonstrate that the accident could not have occurred in the manner described by defendant's witnesses, and such testimony is therefore incredible.

II

The Court erred in giving defendant's Instruction No. 10 for the reason that:

(1) Said instruction directed the jury to find that defendant's truck was within the vision of plaintiff, Catherine E. Wells, at the time that she approached the intersection at which the accident occurred. This instruction was contrary to the facts as shown by the undisputed evidence and, in effect, directed the jury that the plaintiffs' testimony that the truck was not within her range of vision was false.

196 (2) Said Instruction No. 10 is contrary to the law in that it permitted the jury to find that the defendant's truck might constitute an immediate hazard within the meaning of the regulation despite the fact that it was being illegally operated and further contrary to law because it did not require that the defendant's driver reduce the speed of his vehicle and look observedly before approaching the intersection, and further contrary to law because the instruction did not recognize the rule established by Section 28 of the Traffic and Motor Vehicle regulations of the District of Columbia which granted the plaintiff a right of way after she had complied with the regulations respecting the stop sign on Third Street.

(3) Said Instruction No. 10 was in conflict and in con-

tradiction of other instructions granted by the Court, to wit: plaintiffs' Instruction No. 8 and plaintiffs' Instruction No. 12, because it ignored the application of the doctrine of last clear chance and directed the jury to find plaintiff's negligence as a matter of law was a contributing cause and excluded from the jury's consideration the principle of law that notwithstanding any antecedent negligence on the part of the plaintiff, the defendant's negligence, as demonstrated by the evidence, could have been the sole approximate cause of the accident and that had defendant exercised reasonable care and prudence, the accident could have been avoided.

III

For such other matters as will be called to the attention of the Court on argument of this motion.

BERUEFFY & SMOLLAR

By /s/ Carl W. Berueffy

1625 K Street, N. W.

Washington 6, D. C.

Attorneys for Plaintiffs

* * * *

197 Filed Dec 14 1949 Harry M. Hull, Clerk

Order Overruling Motion for New Trial

Upon the coming on for hearing of the motion filed herein by *plaintiffs*, for a new trial, it is this *14th* day of *December*, 1949, ordered that said motion be, and the same is hereby overruled.

Harry M. Hull, Clerk

By /s/ Irene B. Burroughs

Deputy Clerk

By direction of

Justice *F. Dickinson Letts*

* * * *

198 Filed Jan 12 1950 Harry M. Hull, Clerk

Notice of Appeal

Notice is hereby given that Catherene E. Wells and Joseph G. Wells, plaintiffs above named, hereby appeal to the Court of Appeals for the District of Columbia Circuit from the final judgment entered in this action on December 2, 1949.

/s/ Carl W. Berueffy
 Carl W. Berueffy
 /s/ Hyman Smollar
 Hyman Smollar
 Attorneys for Plaintiffs
 1625 K Street, N. W.
 Washington 6, D. C.

* * * *

199 Filed Jan 24 1950 Harry M. Hull, Clerk

*Statement of Points To Be Relied Upon
 on Appeal*

1. The verdict and judgment is contrary to the manifest weight of the testimony in that defendant's testimony is inherently incredible and is at variance with the undisputed physical facts as shown in the case.

2. The Court erred in giving defendant's requested Instruction No. 10 for the reason that said instruction incorrectly stated the law, incorrectly stated to the jury that the undisputed evidence in the case showed that defendant's truck could and should have been seen by the plaintiff, Catherene E. Wells, prior to the accident, and was in conflict and contradiction of other instructions granted by the Court.

3. The Court erred in giving defendant's Instruction No. 3 for the reason that said instruction as given by the

Court is an incorrect statement of the law and was confusing and misleading to the jury.

/s/ Carl W. Berueffy

Carl W. Berueffy

/s/ Hyman Smollar

Hyman Smollar

Attorneys for Plaintiffs

1625 K Street, N. W.

Washington 6, D. C.

* * * *

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Civil Docket

DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT
OF COLUMBIA

Date	Proceedings	Fees	Total
1948	Deposit for cost by	10.00	
Apr. 14	Complaint, appearance & demand jury trial	filed	
" 14	Summons, copies (2) and copies (2) of Complaint issued Served — #1 4-16-48 #2 N. F. 5-5-48		
" 29	Ans. of deft. #1 to complt., app. Richard W. Galiher & Julian H. Reis	"	
" 29	Notice of deft. of taking of deposition of pltff. #1, cert. of service	"	
May 28	Cause dismissed as to deft. #2 only, without prejudice, per attys. for pltffs.	"	
" 28	Calendared (N)		10.00
July 23	Deposition pltff., cost \$15.60,	"	
1949			
Apr. 14	Pretrial Proceedings (4-13-49) Holtzoff, J.		

11 A

Nov.	30	11-29-49 Jurors sworn on voir dire Jury sworn testimony respited til' 11-30-49	Letts, J. (N)
"	30	Trial resumed same jury testimony pltff. rests & defts. rest. prayers of deft. presented respited til' Dec. 1st 1949	Letts, J. (N)
Dec.	1	Prayers of pltff. & deft.	filed
"	1	Trial resumed same jury pltff. coun- sel addresses jury; defts. counsel addresses jury Court charges & jury retires at 3:45 p. m.	"
"	1	Court excuses jury at 4:05 p.m. to re- sume deliberation at 10:00 a.m. 12-2-49	Letts, J.
"	2	Trial resumed same jury resumes de- liberations, accommodations for jury issued	filed
"	2	Verdict for deft. in case of pltff. #1	"
"	2	Directed verdict for deft. in case of pltff. #2	Letts, J. (N)
"	2	Verdict & judgment for deft.	filed
"	2	Directed verdict & judgment for deft.	"
Dec.	9	Motion of pltffs. for New trial; cert. of mailing 12-8-49	"
"	13	P/A of deft. in opposition to motion for a new trial Cert. of Mailing 12-12-49	"
"	14	Order overruling motion for a new trial	Letts, J. (N)
1950			
Jan.	3	Cert. of attendance of witnesses 3 (5 days)	filed

Cont.

Civil Docket

DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT
OF COLUMBIA

Wells et al vs. Grand Etc. et al C. A. No. 1559-48
Supplemental Page No. 1

Date	Proceedings	Fees	Total
1950			
Jan. 12	Notice of Appeal undertaking of Bond in the sum of \$250.00 with U. S. F. & Guar. Co. Deposit Berueffy	filed	5.00
" 24	Designation of record by plttf. Mailed 1-24-50	"	
" 24	Statement of points to be relied upon by the plttf. on appeal Mailed 1-24-50	"	
Feb. 9	Official Transcript of Proceedings Vol. 1 P. P. 1 to 187	"	
* * * *			
3	<i>Catherine E. Wells,</i>		
* * * *			

Direct Examination

BY MR. BERUEFFY:

Q Will you please state your full name? A
4 Catherine Estelle Wells.

Q Where do you live? A 5421 Pumphrey Drive, Forest Hill, Maryland.

Q How long have you lived there? A For one year.

Q And before that where did you live? A 1702 West Virginia Avenue, Northeast.

Q You are one of the plaintiffs in this case? A That is right.

Q Mrs. Wells, calling your attention to May 29, 1947, were you employed on that day? A Yes, I was.

* * * *

5 Q Where did you go from Dr. Cross' office? A I was going to Providence Hospital to see my father.

Q You intended to visit your father in that hospital? A That is right.

Q Where was Dr. Cross' office located? A I believe it is at 13th and Pennsylvania Avenue, Southeast.

Q And you were driving from there over to the vicinity of Providence Hospital? A I was.

Q As you were doing that did anything out of the way or untoward happen? A From the time that I left the doctors?

Q Yes. A No.

6 Q Who was in the car with you? A No one.

Q You were driving the car? A That is right.

Q And did there come a time when you approached the intersection of Third and E Streets, Southeast? A Yes, that is right.

Q In what direction were you going? A I was going north.

Q Where did you turn into Third Street when you came from the doctor's office? A I think that I turned a block below that, whether that is Fourth—it must have been D; it was a block below Third and E.

Q As you drove north on Third Street in that block can you give us an estimate of what your speed was? A I was going slowly because I was trying to find a parking space. I couldn't have been going very fast; probably not more than 15 miles an hour.

Q You were looking for a parking space so you could go into the hospital? A That is right.

Q As you came to E Street did you observe anything? A Yes, a stop sign.

Q Do you know what the position of that stop
7 sign with reference to E Street is, that is the
curb line of E Street? A Yes, it is about 20 feet
back of the curb line.

Q And I believe you said you stopped there? A Yes,
I did.

Q Did you take the car out of high gear? A Yes.

Q After you stopped at the stop sign, Mrs. Wells,
what did you do? A I put the car in low gear and when
I stopped I looked to my left and I looked to my right
and the thoroughfare was clear. I put the car in low
gear, proceeded out into the intersection.

Q As you looked to the left did you have an unob-
structed view of E Street? A Yes, I did.

Q How much of E Street could you see? A Approxi-
mately 150 feet.

Q Is there anything there at that stop sign which to
your mind identifies the distance on E Street which you
could observe without obstruction? A Yes, there is an
entrance into Providence Hospital.

Q And what sort of an entrance is that? A It is a
gate.

Q Did you look in that direction to your left? A Yes,
I did.

8 Q Did you see any cars at all in that area of
E Street? A No, I did not.

Q Did you also look to your right? A I did.

Q Did you see any cars coming from that direction?
A There was nothing coming that way.

Q After having looked as you described, what did you
do, Mrs. Wells? A I proceeded into the street and I
looked again to my left.

Q Where were you when you looked to your left
the second time? A Well, I had entered the intersection.

Q That is part of your car or all of your car? A Oh,
the whole car.

* * * *

Q I believe you said you had entered the intersection.

A That is right.

Q What happened then, Mrs. Wells? A When I looked again to my left I saw this big red truck approaching; it wasn't that far from me at that time and it was coming very fast, and I was going fairly
9 slow, and in the split moment I realized there was going to be an accident; that I couldn't—that if I didn't move or he didn't move that one or the other of us was going to get hurt, and I thought—

Q (Interposing) Wait. When you saw this truck what was the position of the truck with reference to E Street? That is, in what part of E Street was it? A He was coming on E Street in the opposite direction from what I was going.

Q When you say the opposite direction— A I was going north and south; he was coming east and west.

Q Was his car headed east or headed west? A Headed west.

Q Well, now, you were going north on Third Street?

A That is right.

Q Was he on the side of the street from which you entered E Street, or was he on the other side of the street? A He was on my left.

Q In this direction (indicating)? A That is right.

Q Put yourself, if you can, in his position; was he on the right side of the street or the left side of E Street?

A He was in the middle of the street, more or less.

Q How far from the intersection of Third Street
10 was he, Mrs. Wells? A When I saw him?

Q When you saw him, yes. A He was approximately 40 feet.

Q Then when you looked up and saw him what did you do? A Well, I was afraid I was going to get hit because he was coming right straight, so I just stepped on the gas as hard as I could; he didn't look as though he was going to swerve one way or the other, and come in

front of me or back of me, so I tried to get out of his way.

Q Now, going back to the time when you stopped at the stop sign, and you started off again, in what gear did you start? A I started in low gear.

Q Did you at any time shift gears? A Yes. As I entered the intersection I had just shifted into second gear.

Q Will you give us your estimate of the speed at which you were proceeding between the stop sign and the point at which you changed gears? A It was very slow; it couldn't have been more than 10 miles an hour.

Q Then as you entered the intersection I believe
11 you said you shifted into second gear? A That is right.

Q Did you ever shift into high gear? A No, I didn't.

Q About where in the intersection did this collision occur? A About in the middle of the intersection.

Q When the collision occurred what happened to you? A I was thrown out of the right-hand side of the car and landed on the curb on the opposite side of the street.

Q On the opposite side of which street? A Of E Street.

Q Were you unconscious? A No.

* * * *

33 Q Are you familiar with the area of this accident, that is, the Providence Hospital area? A Was I familiar with it before?

Q Yes. At the time of this accident were you familiar with it? A Well, I had been to the hospital visiting patients at various times.

Q You were living on West Virginia Avenue at that time? A That is right.

34 Q That was in the Northeast section of Washington? A That is right.

Q On the day of the accident I believe you told us you had been to 13th and Pennsylvania Avenue, Southeast?

A That is right.

Q Do you recall the route that you took from 13th and Pennsylvania Avenue, Southeast, up to 3rd and E? A No, I don't.

Q Do you remember when you first drove onto Third Street? A I have tried to recall that. The only thing that I do remember is that I turned onto Third Street a block below where the accident happened. I got lost, as I remember, on my way over and I don't know whether I was going in the right direction in the first place or not.

* * * *

36 Q Were you in a hurry at the time this accident took place? A No, as I recall I was ahead of time a little bit.

Q When you came north on Third Street were there any automobiles parked along either the east or west curb in the block you travelled leading up to the intersection where the accident happened? That would be either the curb on your right or the curb on your left on Third Street. A I believe there were cars parked there because if there had not been I would have in all probability parked there myself.

Q You say your best recollection is that you entered Third Street in the block just below where this accident took place? A That is right.

Q Do you remember whether you made a right or a left turn there? A No, I don't remember; I believe that it was right, though.

Q Before making the turn had you continued
37 straight you would have gone right up to the entrance to Providence Hospital, wouldn't you? Do you remember that? A No, I don't.

Q The entrance to Providence Hospital is not on E Street, is it? A No, it isn't.

Q And when you were telling us yesterday about a certain distance which you recognized by reason of the fact that there was an entranceway to the hospital, that is a

back entrance of some sort, is it not? A I think it is an emergency entrance.

Q Was there a congested parking condition around the hospital at that time of the evening? A Well, in the block that I was in at that time I could see up into the next block which was across from the hospital and that block was pretty full.

Q When you stopped at this stop sign can you tell us how far back of the intersection is that stop sign located?

A About 20 feet.

Q And when you looked to the left first and then to the right, as you described for us, did you see any parking spaces available to you? A No.

Q That is what you were looking for, wasn't it,
38 a parking space? A Well, yes, but not when I stopped at the stop sign. I was looking for the clearness of the thoroughfare at that time.

Q After stopping at the stop sign, and looking to your left and to your right, you started the car forward, as I recall your testimony, and you continued the car in motion up to the point where the accident occurred. Is that correct? A That is right.

Q You didn't stop again as the front of your car reached the curb line of Third Street, did you? A Well, I had to stop or slow to shift into second gear.

Q Did you stop again? A Not a complete stop.

Q The only change in motion of your car then you would say was caused or that which followed the change of gears from first to second, is that correct? A That is right.

Q And the next time that you looked to your left this truck was so close to you that you knew an accident was going to happen, didn't you? A Well, the truck was a short distance away from me at that time.

Q Well, it was apparent to you at that time that
39 there was going to be an accident, wasn't it? A That is right.

Q Do you recall when you were stopped at the stop sign you have told us now that you believe there were cars parked both to your right and to your left along the curb line of Third Street? Do you recall whether there were any cars either to your right or to your left parked along Third Street between the position of your car stopped at the stop sign and the south curb line of E Street? A I am afraid I don't understand that.

* * * *

MR. STEWART: Now, with the Court's permission and the witness', I would like to make an attempt to draw this intersection on the blackboard.

Incidentally, which street is the wider, Third or E Street?

THE WITNESS: I think E Street is the wider street.

BY MR. STEWART:

Q The top of the blackboard will be north, Mrs. Wells.

I believe you have told us that the stop sign was about 20 feet back of the intersection. Is that correct? A That is right.

Q I will place a little mark here for the stop sign.

As you reached this stop sign do you recall when
40 you stopped the position of your car with relation to it? A It was back of the stop sign; there was a stop line there, and I stopped at the stop line which was a few inches or maybe a foot back.

Q You mean there is a white line extending from this curb over to this curb? A That is right.

Q When you stopped your automobile it was at or just behind that white line, is that correct? A That is right.

Q With respect to its position to this curb line, the curb on your right, were you next to that curb or were you nearer the center of the street? A I was nearer the curb line than I was the center of the street.

Q Do you recall whether there was an automobile parked near this line that I have drawn? A I don't believe there was.

Q Can you tell us about how far out from the curb the right side of your automobile was when you stopped?

A Probably the width of a car.

Q And what would be your estimate of the width of a car? A I am afraid I couldn't estimate that.

Q Let me place an automobile—if there is anything I do here which does not coincide with what you have said and what you believe, you tell me and I will change it.

We will use this as your automobile, stopped at the stop sign. Now, do you recall, were there any automobiles parked here in this area? A No, there were none.

Q Do you recall, were there any automobiles parked along the east curb line of E Street? That would be this curb line here (indicating). A I don't recall that.

Q Well, when you were at a standstill and looked to your left, do you have any recollection whatsoever of anything, automobile, or object, forming an obstruction to your view to the left? A No.

Q And how far when you looked to the left, from this position, could you see down E Street? A I could see down as far as the entrance to the hospital.

Q And what is your estimate of that distance? A Approximately 150 feet.

Q You could see approximately 150 feet. Do you say that in that area, which was open to your vision, of approximately 150 feet, that you saw no moving vehicles?

A That is right.

42 Q Was there any automobile ahead of you?

A No.

Q Was there any traffic coming in this direction, that would be south, on Third Street? A No.

Q When you were still at this stop sign you also looked to your right, I believe you told us? A That is right.

Q Was there any traffic moving in this direction? A No, there wasn't.

Q Did you see a bus in the vicinity— A (Interposing) No, I did not.

Q (Continuing) —of this intersection? A No, I did not.

Q From the time that you then started forward until the time that you first saw the truck your car travelled approximately how far, would you say? A Maybe 30 feet.

Q Would you mind stepping down here and placing on the board a similar figure to the one I have used for your automobile, and it is to represent the position of your car at the time that you first saw the truck.

(The witness goes to the blackboard and complies with counsel's request.)

Q Would you mind completing the figure?

43 THE COURT: Draw the line a little heavier, if you will please.

BY MR. STEWART:

Q Now, I will ask you to place an X mark on the board, which represents your recollection of the approximate point of the impact between the truck and your automobile.

(Witness complies.)

Q Now, Mrs. Wells, you have redrawn that figure; that is the position of your car when you first saw the truck, is that correct? A That is right.

Q That is the point of impact, is that correct? A That is right.

Q May I ask you, while you are down here, how far approximately do you say that your automobile travelled from the moment that you saw this truck to the point where the impact took place? A Approximately 10 feet.

Q All right. Now, I will draw the figure 10 in that.

One last mark, if you please. Going back to the position of your automobile here, when you first saw the truck, will you draw on the board just the position of the truck at the time that you first saw it? A This is approximate.

Q Certainly.

44 (Witness complies with counsel's request.)

MR. STEWART: You may resume the stand.

(The witness resumed the stand.)

BY MR. STEWART:

Q Do you remember the color of this truck? A It was firey red.

Q How about its size, Mrs. Wells? A It was big in the front; that is all I can recall about it.

Q Would you be correct in saying that it was a moving van type of truck? A I can't recall what the back of the truck looked like.

Q Did it have a big body? A I think that it did.

Q It wasn't a little dump truck? A No, it wasn't a truck like that.

Q And it was red, firey red you would say? A That is right.

Q When you first saw this truck, according to the figure that you placed on the board here, and according to what you told us yesterday, this truck was traveling east, of course, and near the center of the street. Is that correct? A That is right.

45 Q Are you sure that the truck was traveling near the center of the street rather than traveling near the curb on its right? A I think that it was nearer the right than the center.

Q Well, now, you told us yesterday, you told Mr. Berueffy yesterday, that it was nearer the center, didn't you? A Well, as nearly as I can recall it was between the center and the right.

Q You just aren't sure of the position of this truck when you first saw it, are you, Mrs. Wells? A Well, yes, I am sure, but it is pretty hard to say just exactly.

Q Well, tell us today your best recollection of its position. Was it nearer the center or nearer the right? A It was nearer the center than the right.

Q This accident happened in May, 1947, isn't that correct? A That is right.

Q And do you remember on May 12, 1948, that you came with Mr. Berueffy to our office in the Woodward Building, where my associate Mr. Galiher took your deposition concerning the details of this accident? A That is right.

Q Now at the time you were sure a truck was
46 nearer the right, weren't you? Do you recall that?

A I don't recall exactly what I said at that time.

Q Let me ask you if you recall these questions and this answer, and I am referring first to page 7:

"Q And what did you do then? A Well, I realize that he was over close to the curb, that if I stayed where I was, if I had just stopped that he would have hit me right in the front, and I just changed gears, and I pushed down just as hard as I could, and thought that he would go back of me—at least, if he didn't go in back of me he would hit me in the back, and I got just a bit further out, 10 or 15 feet further out, and he came in the same direction that I was going instead of coming this way in back of me, he swerved that way, hit me right between the two doors, or mostly in the front door, I think. I landed out in the street after that and I didn't see the car any more, so I couldn't know exactly, but he did hit me in the front."

Do you remember that question and that answer? A Yes, I do.

Q On page 9 of the deposition:

47 "Q Was he to the left of the center of the road-
at the time of the impact or was he still on what
would be his right-hand side of the street? A At
the time of the impact, he had swerved out into the street.
He had been traveling—when I saw him he was very
close to the right-hand side of the street."

Do you remember that question and your answer as I have read it? A Yes, I do.

Q Now, then, do you want to change your testimony with respect to the position of the truck? A Yes, I

would like to change it in this respect: I have been confused with where the impact happened and where the truck was.

Q You mean you have been confused in your testimony? A No, I mean confused up there drawing.

Q Oh, do you want to step down and change the drawing? Do you? A Yes, I would like to.

Q All right. Step right down and leave the figures which are there but draw in the figures to represent your recollection now of the position of the various vehicles.

(The witness leaves the stand and goes to the blackboard and places figures on the blackboard.)

Q That represents the truck, does it, and its position at the time you first saw it? A Yes.

Q Is there any other figure on that board that you wish to change? A No.

MR. STEWART: Thank you; you may resume the stand.

(The witness resumed the stand.)

Q You are sure you saw this truck before the accident? A Yes, I did see it.

Q Where did the truck stop following this accident, Mrs. Wells? A Where did it stop?

Q Yes, ma'am. Where did it come to rest following the impact? A I think that it stopped about in the middle of the street but I was thrown out and I couldn't be sure.

Q It stopped just about at the point where the accident took place, did it not? A I think that it did.

Q Mrs. Wells, one further question. From the time that you had finished looking in both directions, when your car was back here, until the time that your car reached this point, and you again looked to your left and saw the truck, what were you looking at? A I was looking at the street.

49 Q You were looking ahead of you? A I stopped and looked to my left and then I looked to my right and then I started out. Naturally I looked

in front of me at that time. Then I looked again to my left.

Q You have placed your automobile in this position when you had occasion to again look to the left and saw the truck. Now, this figure here representing your truck is completely and wholly within the intersection, is that correct? A I feel sure that it cleared the curb line.

Q What type car were you driving? A A Buick sedan.

Q Could you approximate for us the length of that car? A No, I couldn't.

* * * *

Redirect Examination

BY MR. BERUEFFY:

Q Mrs. Wells, in this figure which you have drawn here for Mr. Stewart, this is to represent your car? A That is right.

Q And you were entirely within the intersection, and is that what you intended to represent there? A I was beyond the curb line; I think I had cleared that.

50 Q And you looked in this direction and you saw this truck? A That is right.

Q Can you give us an estimate of about how far it was from your car to the truck at that instant? A About 40 feet.

Q Before the impact you moved forward? A That is right.

Q After the impact did you see what happened to your car? A No, I didn't.

Q Did you see what happened to the truck? A No, I didn't.

Q Where on your car, Mrs. Wells, would you say that the force of the impact was? A In the front right about where I was sitting and in front of that.

Q How much in front of the driver's seat would you say it was? A I couldn't say. I know that it was at the left front door and fender.

Q Assuming that this is the windshield on the figure you have drawn, was there any damage in this part of the car that you know of (indicating)? A Yes, there was.

51 Q Mrs. Wells, at the time of this impact whose car hit who? A The truck hit me.

Q And do you know where the force of the impact on the truck was? A I think it was in the grill work.

Q Mrs. Wells, when you approached this stop sign, did you make a full stop? A Yes, I did.

Q And was your car entirely out of motion? A Absolutely.

Q Then your testimony was you looked to the left and to the right.

MR. STEWART: This is repetition, Your Honor.

THE COURT: Yes. Don't repeat her testimony, please.

BY MR. BERUEFFY:

Q As you looked down the street was there any car in that area for 150 feet? A There was not.

* * * *

52 Q At the time that you saw the truck, Mrs. Wells, were you able to form an estimate as to its speed? A It was going very fast.

Q Were you able to form an estimate in terms of miles per hour? A I should have said at least 30 miles an hour.

* * * *

Recross Examination

BY MR. STEWART:

Q Mrs. Wells, you just told Mr. Berueffy that the distance between the distance between this vehicle, the truck, and your automobile, at the time you first saw it was 40 feet? A Approximately that.

Q Well, now, you mean the distance between the two cars, is that correct? A That is right.

Q Don't you mean that the truck was 40 feet back of the intersection, the curb line here, when you first saw it? A No. I say 40 feet away from me.

Q And you are sure of that? A Yes, I am sure of that.

Q Mrs. Wells, didn't you tell us, tell Mr. Galiher at the time of the taking of your deposition, that the
53 40 feet approximation was not representative of the distance between the truck and your automobile, but represented the distance between the truck and the intersection? A Well, the distance was very short between him and me.

Q Well, do you remember at the deposition this series of questions and answers, on page 6:

"Q At that time where was this truck? A Well, he was near enough to me at that time that I knew I was going to be hit.

"Q Can you pick out an object in this room indicating how far he was away from your automobile at that time? A Well, I would say 40, 45 feet.

"Q Was he yet in the intersection? A No.

"Q How far was he back of the intersection? A That is what I would say, 40 or 45 feet.

"Q You mean 40 or 45 feet from the intersection or 40 or 45 feet from where you were? A No, from the intersection."

Then the testimony that you just gave to Mr. Berueffy is incorrect; the distance of 40 feet is from the intersection, is that correct? A That is correct.

Q What was the distance, approximately, of
54 course, between the left side of your automobile and this curb line, an imaginary curb line of the intersection? A I couldn't answer that because I don't know how wide the street is.

Q How do you figure 40 or 45 feet? A Because I know what that distance is.

Q Well, was the intersection 40 or 45 feet? A Yes, about that.

Q It was? By that you mean Third Street is 40 or 45 feet wide? A No, E Street.

Q How wide would you say Third Street is? A It is narrower than E Street.

Q Well, about its width then? A Probably 5 or 7 feet narrower.

Q Well, could you say that Third Street is anywhere from 35 to 40 feet wide? A Probably that.

Q The left side of your automobile, as you were crossing the intersection, was not at the center of Third Street, was it? A No.

Q So before the accident took place, Mrs. Wells, this truck had to drive 40 or 45 feet up to the intersection, and then half of the intersection, and then a little
55 more, before the two vehicles came in contact, didn't it? A That is right.

Q So that would be anywhere from 60 to 70 feet while your car was traveling 10 feet, is that right? A Well, I don't know about the exact feet.

Q I understand— A But I do know it had to travel further than I did.

Q These distances are your best approximation; they are not to be held to an inch or a foot, but they do represent your best approximation, don't they? A That is right.

Q So the truck had to travel 60 or 70 feet while your automobile travelled 10 feet, is that right? A That is right.

MR. STEWART: Thank you.

Redirect Examination

BY MR. BERUEFFY:

Q Can you give us an estimate of your speed while you were traveling this distance of 10 feet, Mrs. Wells? A Well, I had come to a complete stop and had changed gears, and I had just started out, I was going very slow, it had to be less than 10 miles an hour.

MR. BERUEFFY: That is all.

* * * *

56

DERWOOD E. HUFFMAN

* * * *

Direct Examination

BY MR. BERUEFFY:

Q Will you give us your full name? A Derwood E. Huffman.

Q What is your occupation? A I am a policeman attached to the Traffic Department.

Q How long have you been attached to the Traffic Department? A Seven years.

Q Were you attached to the Traffic Division on May 29, 1947? A I was.

Q On that day did you have occasion to investigate an accident which occurred at Third Street and E Street, Southeast? A I did.

57 Q What time was that accident? A I believe it was 6:40 p. m.; that is the time I have, 6:40 p. m.

Q When did you arrive at the scene of the accident, Officer? A Well, I would have to make a guess on that. I didn't record the time I arrived on the scene; that was possibly within the next five or ten minutes after the accident.

Q When you arrived on the scene what did you find? A I found a Buick four-door sedan bearing D. C. tags 11773 alongside the wall on the east side of Third Street, Southeast; on the east side, and that would be on the northeast corner of that intersection, Third and E.

Q At the time you arrived there was the driver of that car at the scene of the accident? A The driver of the automobile was not.

Q What else did you find there, Officer? A I found a truck, that is a Reo van type delivery truck bearing D. C. tags D-1774 in the intersection of Third and E Streets, and headed in a northwest-southeasterly direction.

THE COURT: I don't understand that. How was it headed?

THE WITNESS: This truck had been proceeding east on E Street.

THE COURT: No, I thought you were going to tell us how it was headed.

58 THE WITNESS: It was headed northwest—the front of the truck was headed northwest and southeast.

BY MR. BERUEFFY:

Q In the course of your investigation, Officer, did you make measurements on the street? A I did.

Q Did you determine the location of the point of impact? A Yes, sir.

Q How did you determine that? A Well, the way we determine the point of impact is from the debris on the street.

If the vehicles are moved the only thing we can do is determine from the debris on the street and from the drivers pointing out to us the nearest point of the accident, or point of impact.

Q Was the driver of the Reo truck at the scene of the accident? A Yes, sir.

Q And did you talk to him? A Yes, sir.

Q And did he help you locate the point of impact? A Yes.

Q Officer, if you will step down here to this rather rough chart here, let me explain that this is intended
59 to represent Third Street; this is intended to represent E Street; this is north; this is south; this is west, and this is east.

Did you measure the width of Third Street? A Yes, sir.

Q Can you tell us what that was? A Third Street is 30 feet wide.

Q Would you mark that on the board?
(The witness complies.)

Q Did you measure the width of E Street? A I did.

Q What was that? A E Street was 42 feet wide.

Q Will you mark that also?

(The witness complied.)

Q Did you observe the intersection to see if there was traffic control at that intersection? A There is a stop sign, yes, sir, on Third Street.

Q Where is that located? A About this point on Third Street.

Q Did you measure the distance from the curb line to that stop sign? A Yes, sir, I did, but since the accident my rough sheet has been lost.

Q Can you give us an estimate of how far that is?

A well, it would be purely a guess because this
60 stop sign there sets back some further than the
others, and if I did it would purely be a guess.

* * * *

Q Officer, did you look over that street to determine whether or not any speed limits were posted on Third Street or on E Street? A I didn't look. The speed law in the District is 25 miles an hour.

Q So far as you know were there any signs posting them differently? A That is a school on the northeast corner of that intersection. I didn't look for signs but when school is going on there are signs out for school and 15 miles an hour.

Q Officer, I believe you testified that you did determine where the point of impact was? A Yes, sir.

Q Where was it? A The point of impact was 20 feet east of the west curb of Third Street. This is the west curb of Third Street so it would be 20 feet in this easterly direction from this curb line; this imaginary curb line across the street here would be 20 feet east.

Q Assuming that this X mark represents the
61 point of impact would you indicate that 20 feet
from the west curb of Third Street in there? A
You mean assuming approximately like this (indicating)?

Q No. Assume this is the point of impact here. A This would be 20 feet from the west curb of Third.

Q Yes, sir, and how far was it from the curb? A The point of impact was 20 feet north of the south curb of E Street; this being the south curb, 20 feet north of this south curb.

MR. BERUEFFY: Will you resume the stand?

(The witness resumed the stand.)

BY MR. BERUEFFY:

Q Did you examine the two automobiles? A Yes, sir.

Q Did you observe any damage to the cars? A There was damage on the automobile that was northbound on Third Street. The damage was to the left front door, I guess you would say sort of in the center; the point of impact was in the left front door, but of course the damage was both ways from the very center of the point of impact.

Q Where was the damage to the truck? A The damage to the truck was on the left—the most of the damage was to the left of the front of the truck; that is to say there was damage, I believe there was damage, I
62 don't recall positively, on the right side, but I know the greater amount of damage was on the left front of the truck, that is on the left fender and the left side of the radiator.

Q So the damage was to the radiator and to the fender? A That is correct.

Q At the time you saw the car, the Buick was up in this corner here? A Yes, on the sidewalk.

Q Did you look at that car? Did you examine the inside of it? A I did examine the car, yes, sir.

Q Did you observe what gear that car was in? A Again, I don't recall. I did examine the car but it has been a little while and I don't remember what gear it was in, and again I wouldn't be able to say definitely.

Q Did you examine the truck? A I did.

Q Did you try to operate the truck? A I didn't myself. The driver got the truck out of the street for us.

Q You were able to drive it away? A Yes, he pulled it to the side of the street.

Q Did you talk to the driver of the truck there at the scene of the accident? A Yes, sir.

Q Did he make any statement with reference to his speed at the time of the accident? A He stated 25 miles an hour.

* * * *

64 *Cross Examination*

BY MR. STEWART:

Q Officer Huffman, this accident happened, according to your records, at 6:40 p. m.? A That is correct.

Q So the school signs which may have been erected throughout the neighborhood on that particular day were not up at 6:40 p. m.? No, sir.

Q So the speed limit in the area was the regular District of Columbia speed limit of 25 miles an hour? A That is correct.

* * * *

68 JOSEPH G. WELLS

* * * *

Direct Examination

BY MR. BERUEFFY:

Q Will you state your full name, please? A Joseph G. Wells.

Q Are you the husband of Mrs. Catherine Wells? A Yes, sir.

* * * *

Q After that did you see the car and make an examination? A Yes, sir, I saw it down on the police lot; I don't remember just where it is.

Q At the police precinct? A That is right.

Q Was your car damaged? A Yes, sir.

Q What was the nature of the damage? A Well, it had been struck at the left front door and appeared to be that the damage was in the left post of the front door near the windshield.

Q On the last occasion that you saw the car
70 before, had this damage been there? A How is that?

Q On the last previous occasion to that on which you saw the car and examined the car at the police station, had there been such damage? A No, sir.

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77

ROBERT McLEAN

* * * *

Direct Examination

BY MR. STEWART:

Q Mr. McLean, keep your voice up so we can all hear you. What is your full name? A Robert McLean.

Q And where do you live? A 410 Eye Street, Northwest.

Q Where are you employed at this time? A At the time being Southern Wholesalers, Incorporated, 707 Edgewood Street, Northwest.

Q Directing your attention to May 29, 1947, were
78 you employed at that time? A Grand Union Equipment.

Q And what was your position with Grand Union Equipment? A Chauffeur.

Q On that date, May 29, 1947, were you the driver of the Grand Union Equipment truck which was involved in an accident at Third and E Streets, Southeast, in Washington? A I was.

Q Where were you coming from at the time this accident happened? A I was coming from Virginia, McLean, Virginia.

Q When had you gone to McLean, Virginia, with this truck? A I went out that morning at 8 o'clock; I had deliveries in Fredericksburg, Arlington, Fairfax and McLean.

Q Did you have anyone on the truck with you? A A helper, yes.

Q Is the helper here? A Yes, sir.

Q Where were you going to when this accident happened? A I was going to the warehouse.

Q And where was the warehouse located? A 514 H Street, Southeast.

79 Q What street were you traveling on? A At the time of this accident, E Street.

Q In which direction were you going? A East.

Q About what time of day was it, do you recall? A It was around 6:20, between 6:20 and 6:30.

Q Do you recall the condition of the weather or the streets? A It was raining.

Q The streets were wet, were they? A They were.

Q Had it just started to rain, do you recall? A No, it was raining practically all day.

Q What type of truck were you driving? A I was driving a Reo.

Q And what size truck? A About a ton and a half.

Q What type of body? A Stake body.

Q What do you mean by a stake body? A Well, a stake body is one built up that you can—you know, the van type only it is open in the back. The van has doors in the back, but a stake body, some of them are all covered in the back and some isn't.

Q Is this like a moving van? A That is right.

80 Q Do you recall the color of the truck? A Red.

Q Where did you first drive the truck onto E Street on the day of this accident? A I came off of Canal Street right on into E Street, coming into E Street from Canal Street.

Q As you travelled in the block on E Street traveling east approaching Third, about what was the speed of your truck? A When I entered E Street I was doing about 20 miles an hour. There were two cars in front of me, and also a bus.

Q Were those cars proceeding also east down E Street? A Right.

Q Did those cars reach the intersection of Third before your truck did? A Yes. The bus entered first and the one car, and then one car turned right.

Q Were those cars in the vicinity of the intersection when this accident happened? A No, they weren't.

Q Were they beyond the intersection? A That is right, they were.

Q In what lane of traffic were you traveling— A Right lane.

81 Q —as you approached Third Street? A The right lane.

Q Were there any cars parked along the curb to your right as you approached Third? A No, sir.

Q You are sure you were in the right lane? A In the right lane.

Q Did there come a time when you saw the automobile with which you were later in collision? A Yes. I entered the intersection about two feet and she came out and I saw her swing to the left, and this helper hollered, "Watch it, Mac," and I applied the brake and I came to a stop before I crossed the white line in the center of the street.

Q Let's go back, Mr. McLean. Was this a Buick automobile you were in collision with? A Yes.

Q Where was the Buick when you first saw it? A It was coming into the intersection.

Q It was coming into the intersection? A Yes, sir, it had passed the stop sign already.

Q It had already passed the stop sign? A Right.

Q And you mean it was crossing the curb line coming

into the intersection itself? A Yes.

82 Q Prior to that time, before you saw this automobile, and as you approached Third and E Streets, what if anything did you do? A The first thing I did was slowed the truck down, which I usually do at all intersections, and then I looked to the right and there is a wall there I would say about three and one-half feet, a brick wall, and then I didn't see anything, and I looked to the left, and when I looked back down the street I saw this Buick coming in, and therefore I watched it to hit and that is when I applied he brakes.

Q Did your brakes take hold before the actual impact took place? A Yes, sir.

Q What part of the truck and the Buick automobile came together? A My right front render and the Buick left door.

Q What was the position of the truck? What direction was it headed when the actual impact took place? A It was headed north on Third Street.

Q And how was it that it was headed north on Third Street? A Because when I saw the Buick I swung to the left and put on my brake and then it hit it.

Q Where did the truck come to rest after the impact?

A Right in the center of the street, right by the
83 manhole in the center of the street.

Q Right by what? A The manhole.

Q And what happened to the private automobile? A The private automobile bounced off the right fender and jumped the curb.

Q Which curb are you referring to now? A The curb on the northeast side of the street of E Street.

Q And where did the automobile finally come to a complete standstill and rest? A On the sidewalk over by the brick wall.

Q Are you referring to the sidewalk of Third Street or of E Street? A It was Third Street, the east corner.

* * * *

84 Q When you saw this Buick automobile as it was entering the intersection, as you say, were you able to form an opinion as to the speed of that car? A About 35, between 35 and 40 miles an hour I would say. Anyway it wasn't stopped for the stop sign.

Q And from the time you first saw this car, the Buick car, until the time that the actual accident took place, did you notice any decrease in the speed of that car? A I didn't; it didn't slow down any.

* * * *

Cross Examination

* * * *

BY MR. BERUEFFY:

* * * *

85 Q What time did you go to work in the morning on this morning? A Seven o'clock.

Q Seven o'clock? A That is right.

Q And this was after 6? A That afternoon.

Q You had been working all day? A I had.

Q And you were headed toward the warehouse of the company over in southeast? A That is right.

Q And what did you intend to do there? A I was taking the truck back in; I was finished work.

Q As soon as you turned the truck in you would be through with your work? A Yes, sir.

Q Were you in a hurry to get home? A No, sir, I were not.

Q Did you want to get home that night? A It didn't matter because I was used to working late at night as overtime.

Q So that from 7 o'clock in the morning until
86 6:30 wasn't an unusual day? A I was due off at 4 o'clock in the afternoon and all over 4 o'clock I had extra time.

Q You were supposed to quit at 4 and you got paid overtime after 4? A That is right.

Q You came into E Street at Canal Street? A That is right.

Q Can you tell us about how many blocks on E Street you went? A From Canal Street to Third Street.

Q Yes, how many blocks is it from Canal to Third Street? A Well, coming from the left it is three blocks. Coming from the right it is some kind of Government building over there on the right and then it is two blocks.

Q You were coming from the left, weren't you? A I was coming from Canal Street; on my right it was about a block because a car turned off just before Third Street there, on Second Street.

Q Had you been driving all of that distance at the same speed? A Yes, sir, because I never run over 20 miles an hour or 25 miles an hour.

87 Q Which didn't you go over? A When I entered E Street I was doing 20 miles an hour.

Q All the way down E Street you were going 20 miles an hour? A Yes, sir.

Q You talked with the policeman after this accident, didn't you? A No, sir. I saw him over here in court; that is the first time I saw him.

Q The policeman didn't talk to you at all at the scene of the accident? A He asked me questions.

Q Was one of the questions how fast you were going? A That is right.

Q Did you tell him you were going 25 miles an hour? A I told him I was going approximately 20 or 23 miles an hour, anywhere from 20 to 25 miles an hour, because there was a bus and two cars in front of me.

Q How far were these cars ahead of you? A Well, the nearest car to me was about 15 feet in front of me.

Q About 15 feet in front of you? A Yes, sir.

Q And how much were the other cars? A Oh, 88 he was further than that, I would say a quarter of a block.

Q He was a quarter of a block? A Yes.

Q What happened to this car that was immediately in front of you? A He turned off right at Second Street.

Q What street? A At Second Street.

Q So that between Second and Third Street was there any car in front of your truck? A No, sir.

Q Was there any car in front of you in the other direction? A No, sir.

Q Did you see about traffic coming up second street, was there any traffic coming up Second Street? A No, sir.

Q Was there any traffic coming south on Second Street? A No, there weren't any traffic at all.

Q When you got to Third Street did you see any traffic there? A No, sir.

Q You didn't see any traffic coming north or south on Third Street? A No, sir.

89 Q And at that point there was no traffic coming east on E Street? A There was a car about a half block behind me.

Q Was there any traffic coming west on E Street? A No, sir.

Q So that as you approached the intersection of Third and E Streets you were the only car on E Street between the point where you were and the intersection? A That is right, sir.

Q As you approached E Street how fast were you going? A I slowed down.

Q Before you slowed down how fast were you going? A About 23 miles an hour.

Q And then you slowed down? A Back to 20.

Q To 20? A Yes, sir.

Q Mr. McLean, this is the chart which has been drawn before. This is E Street and this is Third Street; this is north; this is south; this is east and this is west. Will you just step down and show us where you were when you slowed down to 20 miles an hour?

(The witness left the stand, and went to the black-board.)

A When I saw her I was about here (indicating).

90 Q Where were you when you slowed down? A
When I slowed down I was about along here.

Q And how far from the curb line of Third Street would you say that was? A I would say that was about 20 feet.

Q So you went ahead at about 20 miles an hour? A Yes, sir.

Q And where were you when you saw Mrs. Wells' car for the first time? A About along in here.

Q Let me point out to you that you have indicated that you were approximately at the curb line. Is that what you mean? A Yes, sir.

Q Where was Mrs. Wells' car? A Mrs. Wells' car was about along in here.

Q Was it moving? A It was moving, yes, sir.

Q And you said it was moving? A At the rate of about 35 miles an hour.

Q Will you estimate the distance that there was between you and the Wells car at the time you first saw the Wells car? A That is where I stopped, because—

Q How many feet do you think that was? A This street is about 30 feet, or 25 feet wide, isn't
91 it?

Q Which street do you mean? A Third Street.

Q Third Street is 30 feet wide. A I would say she was around 10 or 15 feet.

Q From your car? A Yes.

* * * *

Q Did you see the Wells car at any point when it was behind or even with the stop sign on Third Street? A No, sir, I didn't; it had passed the stop sign.

Q It had passed the stop sign by the time you first saw it? A Yes.

Q And you came down and you got here to this line, which you have indicated, you slowed down to 20 miles an hour, is that right? A Yes, sir.

Q Did you look ahead of you? A I looked forward, left and right.

Q Which did you look? A I looked right first, left second, and then forward, and that is when I saw her coming.

92 Q As you came down E Street she was to your right? A That is right.

Q When you looked down from about this point you looked to the right down Third Street. How far down that street could you see? A You couldn't look down Third Street from that distance because there is a wall there, and there is a house setting up back near the corner.

Q So that as you looked your vision of all of Third Street was obstructed by the house? A No, not all; I could see the stop sign.

Q You could see the stop sign? A That is right.

Q Was Mrs. Wells at that stop sign? A No, I didn't see her.

Q How far beyond the stop sign could you see? A About five feet.

Q About five feet beyond the stop sign. How far up Third Street could you see? A I could see about half way the block to my left.

Q You could see all the way up that street? A Approximately.

Q After you got to this intersection you saw Mrs. Wells moving right in this area? A That is right.

93 Q You mean the front of her car was in the area or the back of the car? A The front of the car.

Q The front of the car was right here? A Right.

Q And your judgment was that she was traveling 35 miles an hour, is that right? A That is right.

Q Did she give you any sign that she was going to stop? A No, sir.

Q As you looked at her you knew she was going on through that intersection? A Did I do which?

Q As you looked at her you knew she was going on through that intersection? A That's the way it looked.

* * * *

Q Do you know how fast the brakes on your
94 truck would stop it? A In dry weather, sir, it would stop at the rate of 30 miles an hour, I could stop within 5 or 6 feet.

Q And you say you were going 20 miles an hour?
A Yes, sir, and the road was slippery.

Q In what distance could you stop that truck at 20 miles an hour? A Well, I stopped in less than 5 feet, sir.

Q As you saw this car coming down into the intersection in front of you what did you do? A The first thing I did, swung the truck to the left and applied all brakes.

Q You swung to the left and you put the brakes on hard, as far as you could? A That is right.

Q Could you estimate the distance you travelled after you put the brakes on? A Yes, sir.

Q Tell us. A It was about three and a half or four feet.

Q You travelled three and a half or four feet? A Yes, sir.

Q After you put the brakes on? A Yes, sir.

Q As you swung to the left was there any car
95 or any other obstruction to the right behind Mrs. Wells' car? A No, sir.

Q There was not? A No, sir.

Q At the speed that she was going had you swung to the right would she have been clear? Would you have missed her? A I would have got the back end of her.

Q You would have got the back end of her? A Yes.

Q As it was the front of your truck hit her about the door post? A Yes. She hit my right front fender about the back of the tire.

Q Well, what part of her car was in collision with what part of your car? A The beginning of the left front door.

Q Of her car? A Yes, sir.

Q And what part of your car? A The right front fender right back of the wheel.

Q At the instant of the impact what was your direction of travel, Mr. McLean? A When it happened?

96 Q Yes. A I was traveling east, and when I saw I was going to hit, I went north.

Q You turned into north? A Yes.

Q Did you make a complete left turn or were you angling off? A I was angling off.

Q You were angling off to this corner here? A Yes, sir.

Q Did you see what happened to Mrs. Wells? A Did I see what happened to Mrs. Wells?

Q Yes. A Yes, sir.

Q What did happen? A After the car bounced off the right front fender it jumped the curb.

* * * *

97 Q When you looked at her and saw her here,
98 how far would you estimate that she travelled after you saw her? A Into the—

Q (Interposing) How far did her car travel? A She travelled near the center of the intersection before I saw her again, and when I saw her she was laying out on the ground.

Q You saw her right here and then the next time you saw her was in the center of the intersection? A That is right.

Q Did you watch her in that intervening period? A Sure, I was watching the car.

Q You were watching the car? A Yes, sir.

Q And in this distance from here to the intersection, to the middle of the intersection, that is all the observation you made of her car, that is the only time you saw her, is that right? A Yes, I watched the car until it collided.

Q Did you notice an increase of speed on the part of that car? A No, sir, I didn't notice no increase; it was the same speed.

Q The same speed all the way through? A Until it hit and then it bounced off and slowed down.

99 Q Did you honk your horn? A Yes, I hit my horn twice; in fact, I was almost laying on it when I first saw her.

Q When did you first honk your horn? A When I first saw her.

Q When was it after you saw her at this point that you applied your brakes? A How long was it? When I saw she was not going to stop.

Q The first time you saw her she was here? A Yes, about 30 or 40 seconds.

Q Let me be sure I got this straight. After you saw her you had to watch her awhile to decide she was not going to stop, didn't you? A That is right.

Q How long did you watch her? A I watched her until she got about 5 feet from the truck. In fact, I watched her until the car hit the truck, and when it hit it jarred me and the other fellow fell over on me, and then I jumped out.

Q How far had she gone before you decided she was not going to stop for the intersection? A She was out past this curb line on E Street about, oh, around three or four feet.

Q She was three or four feet past the curb line on E Street? A I would say the front wheels back to her front door was in the intersection on E Street.

Q The back door and the front door were both in E Street past the curb line? A No, just the front door.

Q Where was your car when you saw that? A I was in the intersection also.

Q How far into the intersection were you? A I was about half way completed turn.

Q Making this left turn you were half way through?
A I was about half way.

Q And that was before you decided she was not going to stop? A That is right.

Q And that is the point at which you put on your brakes? A No, I put on my brakes just before I started making the left turn.

Q But you started to swing to the left and put on your brakes before you decided she was not going to stop? A Sure.

Q You did? A Sure, because she could have made a right-hand turn and that would have throwed me
101 to the right of the line and she could have went clear down on the right.

Q As you approached the intersection on Second Street—that is not Third Street but Second Street—how fast were you going then? A When I approached the intersection?

Q Yes. A Twenty miles an hour.

Q Did you slow down? A I slowed down just before I got to Second Street, the intersection, I slowed down. I slow down at all intersections.

Q Were you present when the officer identified the point of impact here? A Yes, sir.

Q Did you help him identify it? A What, a drawing of it?

Q No, no. Did you point out to him where the accident occurred? A Yes, sir.

* * * *

BY MR. BERUEFFY:

102 Q Did you see the officer make measurements?

A Yes, sir, I saw him; he had a tape measure there.

Q He and his partner had a tape measure? A No, his partner was putting a tire on the patrol car.

Q So this officer made the measurements by himself?
A Yes; another fellow assisted him in making the measurements.

Q Do you know what that other fellow's name was?
A No, sir.

Q Was he just a bystander? A He was somebody that came up after the accident happened.

Q The point which the officer measured, he measured from this point to this point to the curb line? A Yes, sir.

Q You saw him do that? A Yes, sir.

Q Was the point from which he measured the point that you had pointed out to him as where the accident happened? A I showed him it was in the center of the street, right in the middle.

Q You showed him that and he measured from that point? A Yes, sir.

Q What part of the intersection would you say
103 this accident occurred in, Mr. McLean? A I say it occurred about the center both ways.

Q Just about the center of the intersection? A Yes, sir, in the center of E Street and in the center of Third Street.

Q Did you go the same distance into the intersection that Mrs. Wells did, or did you go further, or did she go further? A Which one of us went the furthest in there?

Q Yes. Did you go as far into Third Street as she came into E Street? A Sure—I went over to about the center of Third Street.

Q You went out to the center of Third Street? A Yes.

Q Did you go beyond the center of Third Street? A No, sir.

Q You are sure of that? A Positive.

Q At the time you applied your brakes did they take hold? A Not right away because the ground was slippery.

Q Did you look at the street after the accident? A Yes, sir.

Q Did you find any skid marks in the street?
104 A Yes, sir.

Q How much skid marks did you find? A I found about five feet completely round.

Q Were those skid marks from your car? A Yes, sir.

Q And you found about five feet of skid marks? A Yes, sir.

Q And they went right up to the point where your car and the other car were in collision? A Yes, sir; my truck was stopped.

Q Your truck was stopped? A Yes, sir.

Q At the time of the accident was your truck stopped? A Yes, sir.

Q It wasn't moving at all? A No, sir.

Q And it was angled? A Into the northeast corner of E Street.

Q Was it still raining at the time the accident happened? A Yes, sir.

Q Was it raining hard? A No, sir, just a fine drizzle.

Q Were the streets very wet? A Yes, sir.

105 Q Quite wet? A Yes, sir.

* * * *

Redirect Examination

BY MR. STEWART:

Q Mr. McLean, as you approached the place where this accident happened was it your intention to go straight through? A Yes, sir.

Q You weren't going to make a left-hand turn at that intersection? A No, sir.

Q And before the actual impact took place between the two cars, the truck and the car, your brakes did take hold? A Yes, sir.

* * * *

106

Purvis Smith

* * * *

Direct Examination

BY MR. STEWART:

Q Will you state your full name? A Purvis Smith.

Q Where do you live? A 1450 Church Street, Northwest.

Q Where are you employed? A Grand Union Equipment Company.

Q And what is your position there? A Helper on a truck.

Q You have been working this morning, have you not?

A Yes, sir.

Q Directing your attention to May 29, 1947, were you working for the Grand Union Equipment Company on that day? A Yes, sir.

Q Were you riding a truck which was involved in an accident at Third and E Streets, Southeast, in Washington on that day? A Yes, sir.

Q Who was the driver of that truck? A Robert McLean.

Q Where had you been on that particular day, 107 do you recall? A Well, we had been to Fredericksburg and worked back around through McLean, Virginia, and coming back into the warehouse.

Q You were coming back into the warehouse when this accident happened? A That is right.

Q Do you recall what street you were driving on and what direction? A We was on E Street, traveling east.

Q Where were you seated in this truck? A In the right-hand seat.

Q And what type truck is that? A That was a van type Reo.

Q And do you remember its color? A Red.

Q As the truck travelled East on E Street, approaching Third, what was the speed, or the approximate speed of the truck? A I would say about 22, 23 miles an hour.

Q Did you see a Buick automobile which was later

involved in collision with this truck, before the truck reached Third Street? A Yes, sir, I saw it.

108 Q Where was the truck? A When I first saw the Buick automobile the truck was just back this side the intersection of Third Street.

Q You say just back this side of the intersection of Third Street? A Yes, sir.

Q Can you tell us by feet or any measurement how far the truck was back? A I imagine about 10 or 15 feet, something like that.

Q At that time you saw this Buick automobile, is that correct? A That is right.

Q Where was the Buick automobile when you first saw it? A When I first saw the Buick automobile it was beyond the stop sign on Third Street.

Q What do you mean by beyond the stop sign? A Behind the stop sign it hadn't got to the stop sign.

Q Did you continue to watch that Buick automobile? A Yes, sir, I continued to watch.

Q Can you tell us the approximate speed of that car when you first saw it? A Well, it seemed to me it was traveling about 35 or 40 miles an hour.

Q Did that Buick automobile stop at any time
109 from the time you first saw it, behind the stop sign, until the accident happened? A No, sir, it did not stop.

Q Did you see it pass the stop sign on Third Street? A Yes, sir, I saw it pass the stop sign.

Q Tell us in your own words from the time you first saw this Buick automobile exactly what happened. A From the time I saw this Buick automobile until the time it stopped, I watched it from the time I saw it. I saw she wasn't going to stop as we was just about to enter the intersection, and by the time I guess Mac saw it at that time I yelled, and he was swinging right, and at that time our right-hand fender caught her right in her left-hand door.

THE COURT: Which way did he swing?

THE WITNESS: He swung left.

BY MR. STEWART:

Q And did you say "Mike" or "Mac"? A Mac.

Q When the two vehicles came together what was the approximate position of these cars? A The truck was kind of headed Third Street-like at an angle, and the car jumped the sidewalk; it is a brick wall there and I saw her when she fell out of the car, went out the right-hand door on the E Street sidewalk, and the car went between the tree and the brick wall and stopped just
110 about practically in front of the school house.

Q From the time that you saw this Buick at first, until the time that the actual impact took place, did you observe any decrease in its speed? A No, sir.

Q Where did the truck come to rest after this accident? A The truck came to a stop just about middle ways of the intersection where he swerved it.

Q Where he swerved? Is that what you say? A That is right.

* * * *

Cross Examination

BY MR. BERUEFFY:

Q As you were riding along, Mr. Smith, were you watching for traffic and other cars, too? A Yes, sir, I was watching for traffic in the intersection.

Q You helped Mr. McLean? A That is right.

Q Where did you turn onto E Street? A I can't recall that street down there where we got onto E Street; it is around about—down there around—we came into E Street down Southwest there but I can't recall what street it was, just under the underpass down there.

111 Q Do you recall how many blocks you travelled on E Street? A I would say about two or three blocks on E Street.

Q So that you crossed two or three streets, is that right? A That is right.

Q And as you crossed the first street did you look for traffic? A I look for traffic at all intersections.

Q Did you see any traffic? A No, sir.

Q None at all? A No, sir.

Q Did Mr. McLean slow for that intersection? A He slowed for that intersection.

Q Do you remember approaching the intersection of Second and E Streets? A Second and E Streets?

Q Yes. A I can't recall.

Q You don't recall that at all? A No, sir.

Q You don't recall whether you looked for traffic? A I looked at all intersections but my remembrance about the Second Street, I don't think it comes through there.

112 Q As you approached the intersection of Third and E Streets, that is the intersection at which this accident happened, isn't it? A That is right.

Q What was Mr. McLean's speed there? A Before he got to the intersection?

Q Yes. A He was only traveling about 22 or 23 miles an hour.

Q As he approached the intersection did he slow down? A Yes, sir, he slowed down.

Q How much did he slow down? A I couldn't tell how much he slowed down, because I wasn't watching the registration, I was watching for traffic.

Q Could you give us an approximation of the speed that he slowed down? A I couldn't tell you.

Q Look at this chart. Assuming that this is Third Street that this is E Street; in what lane of traffic was your truck? A What lane of traffic? Our truck was traveling east.

Q Yes. Was there more than one lane for automobiles to travel east on E Street? A I really don't think
113 there is more than one lane; maybe there are but I can't recall.

Q You can't recall? A No, sir.

Q Were you in the middle of the street? A No, sir, we wasn't in the middle of the street.

Q How close to the curb were you? A Well, I couldn't say how close to the curb we were. We wasn't right up on the curb.

Q Can you tell us how far back of the intersection Mr. McLean was when he slowed? A I don't exactly tell you how far he was back; I know he slowed down as he approached the intersection.

Q But you could give us an approximation of how far back he was? I know when I saw the car he was 10 or 15 feet back.

Q You saw the car when you were 10 or 15 feet back from the curb line? A That is right, and he had cut his speed before.

Q And he had cut his speed before that? A Yes.

Q Was that the first time you had looked down Third Street? A That is the only view I could get of Third Street.

Q In other words, Third Street was obstructed
114 to your view, is that right? A That is right.

Q Did Mr. McLean look down Third Street? A I really don't know. I was looking myself, whether he looked or not.

Q You never saw him? A I couldn't say; I was looking out the right; I couldn't say whether he was looking or not.

Q At any time you saw him, did Mr. McLean look down Third Street? A At any time I saw him I was watching the car until it hit.

Q So when you were 15 feet back you were watching down Third Street? A I said approximately 10 or 15 feet; I couldn't exactly tell how far back.

Q Where was the Wells car when you first saw it? A When I first saw it it hadn't got to the stop sign.

* * *

Q Just so you will understand this, this is
115 Third Street; this is north; this is south; this is

east and this is west. And your truck was traveling in this direction? A That is right.

Q And Mrs. Wells was traveling in this direction? A That is right.

Q Will you indicate about— A This is the stop sign here; I saw Mrs. Wells right along here before she got to the stop sign.

Q Just put a little mark there, will you? A Right along in here where I saw her.

* * * *

Q How far would you estimate that car was from the curb line of E Street when you saw her at the point you have indicated? A I couldn't exactly tell how far it was; I know she had not got to the stop sign.

Q But you don't know how far back of it she was? A No.

Q You don't know how far she travelled between the time you first saw her and the time of the accident? A

Yes, sir, I know approximately how far she travelled.

116 Q Well, approximately how far did she travel?

A About the middle of the intersection.

Q She came out to about the middle of the intersection? A That is right.

Q But you don't know how many feet that was, even approximately? A No, sir.

Q You couldn't even give us an approximation? A No, sir, I don't know how wide the street was.

Q Did Mr. McLean put on his brakes? A Yes, sir, he applied his brakes.

Q Did he put them on hard? A I guess he did.

Q Even after he put on his brakes did Mr. McLean's truck stop? A It didn't come to a complete stop until after they collided together.

Q In other words, your truck was still moving when the collision occurred? A No, sir. When the collision occurred the truck was sliding and the truck didn't go any further; the back end came around like that when the collision occurred and he made his left turn.

Q Where was the Wells car when Mr. McLean put
117 on his brakes? A I couldn't tell approximately
where her car was; she was in the intersection.

Q She was in the intersection? A When he first
applied his brakes, before he approached the intersection?
I don't get what you mean.

Q At some point Mr. McLean applied his brakes, in-
tending to stop; is that right, because this car was coming
into the intersection? A I really don't know whether he
applied his brakes intending to stop or not.

Q Do you know whether he applied his brakes? A
Yes, sir, he applied his brakes.

Q Don't you know then the application of the brakes
was to slow down when he was back from the intersection?
A That is right.

Q You saw him put his brakes on? A I didn't see
him put his brakes on; I was watching the traffic, watching
the car that approached the intersection.

Q Do you know whether he put his brakes on or not?
A Yes.

Q How do you know? A Because the car come to a
sudden stop; then it didn't go any further.

118 Q It came to a sudden stop? A That is right.

Q As a matter of fact the truck came to a sudden
stop because there was a collision between it and the
Wells car, didn't it? A The car didn't stop. The truck
stopped.

Q The truck was stopped? A That is right.

Q And it wasn't moving at all? A They collided be-
cause it wasn't moving.

Q Just before the two cars collided was the truck
moving? A Yes, sir, it had to be moving.

Q How fast was it moving then? A I can't recall.

Q You don't know how fast it was moving then? A
No, sir.

Q Did you feel or see Mr. McLean swing the car to
the left? A Did I see him? I felt him swing it.

Q You felt him swing it? A Yes, sir.

Q You were still watching this car? A That is right.

Q You were still watching the Wells Car? A
119 Yes, sir.

Q Where was the Wells car when Mr. McLean swung to the left? A She was entering the intersection and as he was entering the intersection, entering Third Street—I mean entering the intersection at Third Street—she was still moving in.

Q Was any part of her car in the intersection at that time? A At that time?

Q Yes. A When he swung?

Q Yes. A Yes, sir.

Q How much of the car? A I couldn't recall how much of it was in there.

Q You don't have any idea as to whether the bumper or the hood or the hood or the front door or the back door was in the intersection? A Well, when he swung I couldn't tell how much her car was in there.

Q How much of his car was in the intersection when he swung? A How much of his car was in the intersection when he swung?

120 Q Yes. A Well, practically only just the engine part, the cab part, when he swung.

Q In other words, just the nose of the car? A Probably; just the cab when he swung.

Q The cab was past the curb? A Yes, sir, when he saw she wasn't going to stop.

Q How sharp a turn did he make? A It was sharp enough to continue going back down E Street; the front wheels was locked and he couldn't cut right and so the cop got in and drove it back down E Street the way we were coming from.

Q The wheels of your truck were locked? A That is right.

Q Of course you don't know the point at which those wheels became locked, do you? You weren't driving the car so you don't know exactly when the wheels became locked? A When they became locked?

Q Yes. A When her car rammed into the right-hand fender. The fender was bent down on the tire.

Q There was not a thing wrong with your truck prior to the accident, was there? A No, sir, there wasn't anything wrong with it.

Q He could have turned to the right or could have turned to the left or could have straightened it out?

121 A That is right.

Q Do you drive a car yourself? A No, sir, I have drove.

Q Have you ever driven a car? A Yes, sir.

Q When is the last time you drove a car? A 1945.

Q About two years before the accident? A That is right.

Q Were you there when the policeman made measurements at the scene of the accident? A When he made an investigation?

Q Yes. A Yes, sir.

Q Did you see the policeman make measurements? A Yes, sir, I saw the policeman make measurements.

Q Did you see him measure from the point where the two cars came together? A Yes, sir.

Q Did you show him where the two cars came together or did Mr. McLean? A The truck was still in position there where they came together.

Q The truck was still right there? A That is right.

122 Q You have said, I believe, that you saw Mrs. Wells fall out of the car? A Yes, sir.

Q Through which door of the car did she fall? A She fell out the right-hand door.

Q On the opposite side from the driver's seat? A That is right.

Q Was that door open? A I really don't know whether it was open or not. She fell out and I saw her when she went out.

Q You saw her go out? A Yes, sir.

Q Was her car moving at that time? A Yes, sir, the car was still moving.

Q How far did her car move after she fell out? A I don't know exactly how far, but it practically went to the front of the school house on the sidewalk, after it jumped the sidewalk.

Q And when you were about ten or fifteen feet back of the intersection you saw the Wells car here? A That is right.

Q And you saw it come all the way across the point of impact? A That is right.

123 Q And you never took your eyes off of it? A Never took my eyes off of it.

Q Did you ever see it increase or decrease its speed? A From the time I saw it, before it got to the stop sign, until the time they were together it didn't decrease its speed.

Q Did increase its speed? Did it go any faster? A The same speed she was traveling when I saw the speed she was traveling when she was hit.

Q The same speed all this way? A That is right.

Q Did Mr. McLean honk his horn? A I don't guess he had time.

Q Of course your car was going this direction and angling across the street? A Angling that direction when he swerved it.

Q Where was the front of his car when he began this turn? A I didn't understand.

Q With reference to the curb line of Third Street where was Mr. McLean when he began this left-hand turn? A I say his cab was about in the intersection, the cab of the truck.

Q Before he made that turn had he given any indication to you from which you knew that he saw she Wells car? A Before he made the turn?

124 Q Yes. A I couldn't tell he gave any indication to me because I was still watching the car coming down the street.

Q He didn't say anything? A He didn't have time to say anything.

Q Well, you had time to tell him "Watch out." A I hollered, "Watch out," when I saw he wasn't going to stop; he was curving the truck when I hollered "Watch out."

Q How long was it after you hollered watch out that the impact or collision occurred? A They come together just like that.

Q You couldn't tell us in terms of whether it was a second or five seconds? A I couldn't tell.

Q You just don't know? A No, sir.

Q Is this stop sign right on the curb line or was it back from the curb line of E Street? A I don't know whether any curb line was there or not; I didn't see any.

Q There was a curb on E Street? A Oh, the stop sign was back of the curb line—you mean of the sidewalk?

Q Yes. A The stop sign was back from the sidewalk.

125 Q About how far back? A I really don't know.

Q After the accident you didn't measure that distance, did you? A What did you say?

Q After the accident you didn't go over and see how far back the stop sign was? A No, sir, I didn't go on over there.

Q Did you make any measurements at all at the scene of the accident? A No, sir, I didn't make any measurements.

Q Did you look in the street to see if there were any skid marks? A No, sir.

Q You didn't look? A No, sir.

Q Do you know whether there were skid marks on the street or not? A No, sir, I really don't know.

Q How long have you worked for the Grand Union Equipment Company? A I have been working for Grand Union ever since October, 1946.

Q And you are still working there? A Yes, sir.

126 Q Are you working regularly? A Yes, sir.

Q What time had you left on May 29 to make this trip down to Fredericksburg and around through these various places in Virginia? A We always leave around 8 or 8:30 every morning.

Q And had you gone to work before that any length of time? A I really don't know; we leave around 8 or 8:30.

Q You don't know what time you went to work that morning? A No, sir, because sometimes he tell us to come in early and again the regular time.

Q What time did this accident happen? A I really don't know what time it was; I didn't have any time.

Q Had you put in a long day or a short day? A We had put in a pretty good day.

Q Where were you going? A Where were we going?

Q Yes. A We went to Fredericksburg and worked around through Virginia back around through McLean.

Q I understand that, but as you were going
127 down E Street? A We were going to the warehouse.

Q What did you intend to do? A We intended to turn in for the day.

Q Turn in your truck and get off for the day? A That is right.

Q Were you anxious to get off that night? A Well, I wasn't say anxious to get off.

Q But you were going home and you wanted to get off, didn't you? A Well, just like everybody else, you want to get off when the time comes.

Q And it had been a pretty long day? A That is right.

Q And you had been working pretty hard? A That is right.

Q Delivering a lot of furniture to a lot of different places? A That is right.

* * * *

149 MR. BERUEFFY: I object to Defendant's No. 3 on the ground that it sets forth a legal presumption of reasonable care on the part of the defendant.

I don't believe that the law creates an active presumption of due care; it is merely a matter of the burden of proof; but certainly if there is a legal presumption it is that both the plaintiff and defendant were exercising due care, and that it is up to either to prove by evidence that the other was negligent.

This instruction merely tells the jury that the defendant is presumed to be free of negligence, and my objection is specifically to the second sentence.

Of course the first sentence Your Honor has already granted in Instruction No. 1, so that this would merely duplicate that part of it.

150 The part that the burden of proof is on the plaintiff to show negligence, I certainly do not object to.

* * * *

154 MR. BERUEFFY: In reference to No. 10, in paragraph 2, I object to the definition of an immediate hazard, "which means a vehicle so close to the intersection that should it continue with undiminished speed and should the unfavored vehicle start, the two would reach the point where their paths would converge at approximately the same time." I object to that because I don't think that is what the traffic regulation means, and it would permit a car to be coming 70 miles an hour, and 500 feet away, and still if the driver who had stopped misjudged the speed at that distance, or the distance away, it would in effect say that he was responsible for the accident, which I submit is not the law.

I also object to the phrase in the paragraph at the bottom of the page, "And if you find that she failed to see what the evidence conclusively shows was there to be seen." That in effect may tell the jury that this truck

was in the 150 feet and she should have seen it, and there certainly is a conflict of evidence on that.

I think that is a mistake as to what the evidence, at least from the point of view of the plaintiff, may show, and it may constitute a direction of a finding on that point when there is a conflict of evidence.

And, of course, the law does not impose a penalty for contributory negligence regardless of whether there is proximate cause or not, as this last sentence seems to indicate.

She can't recover if she was contributorily negligent, and if her negligence was a proximate cause, but that is not a penalty for just being careless, because you can't recover for your own fault, and I don't think the Court ought to describe contributory negligence as apparent.

* * * *

157 MR. BERUEFFY: Your Honor, just as an excess of precaution I would like the record to show that while I have agreed to the changes Mr. Stewart has made—

THE COURT: You preserve your exception to the instruction, which you have heretofore made.

* * * *

160 THE COURT (Letts, J.): Ladies and gentlemen of the jury: It is either admitted in the pleadings, or stems out of the evidence, that on May 29, 1947, the plaintiff Catherine E. Wells was operating the automobile of her husband, Joseph G. Wells. That at the intersection of Third Street and E Street, Southeast, said automobile was in collision with a truck owned by the defendant Grand Union Equipment Company, and operated by Robert McLean, its agent and servant.

That as a result of such collision the plaintiff Catherine E. Wells was injured, and that the automobile of her husband was damaged.

By the complaint plaintiffs say that the collision and such injuries and damage were proximately caused by the negligence of the defendant in the operation of its truck; that the driver of its truck was negligent in that he was proceeding at an excessive speed; that he failed to yield the right of way to the plaintiff Catherine E. Wells, and that he failed to keep the proper lookout.

161 By its answer the defendant denies that it was negligent in any respect and asserts as an affirmative defense that the accident was contributed to by the negligence of the plaintiff Catherine E. Wells.

Such are the issues as made by the pleadings in this case. Upon such issues evidence has been taken, and from such evidence of facts and circumstances you must find your verdict, following the instructions as to the law which rules the case.

As to the case of the plaintiffs, the burden of proof rests upon them, which means that before you would be warranted in finding a verdict for these plaintiffs they must prove, and you must find from all the evidence, that the defendant was negligent in one or more of the respects charged by them; and second, that such negligence proximately caused the collision and the consequent injuries and damages. If you find upon a review and from your consideration of the facts and circumstances shown in evidence that these plaintiffs have sustained that burden of proof then it becomes your duty to determine the amount of damage sustained by each of the plaintiffs. If you find that the plaintiffs have failed to prove these elements of their case, as I have outlined, or have failed as to any one of these necessary elements, then they may not succeed and your verdict in such case must be for the defendant.

As I have indicated, the defendant has not only
162 filed an answer denying the charges of negligence made against it by these plaintiffs, but it has asserted an affirmative defense, the defense known as contributory negligence.

As to that defense the burden of proof rests upon the defendant, which means that even if you should find that the plaintiffs have fully made out their case otherwise, as I have instructed you, still they may not recover if the defendant has sustained the burden of proof of the affirmative defense and has satisfied you by the preponderance of evidence that the plaintiff Catherine E. Wells was guilty of negligence, and that her negligence contributed to cause the collision, and the consequent injuries to her and damages to her husband.

Negligence means the same thing, whether you are considering plaintiffs' case in chief or whether you are considering the defendant's defense of contributory negligence. Negligence is the want of ordinary care. It is the doing of that which a person of ordinary care and prudence would not have done or leaving undone that which a person of ordinary care and prudence would have done under like or similar circumstances.

Before proceeding further you are told with respect to the defense of contributory negligence that the plaintiff Catherine E. Wells was under a duty to exercise reasonable care, caution, and prudence for her own safety.

163 If she was negligent in any manner, and if such negligence on her part contributed to cause the collision and her injuries, she may not recover. If she fails to recover, necessarily her husband Joseph G. Wells must likewise fail to recover.

You have been told, and it appeared from the evidence, that the defendant is a corporation. The mere fact that the defendant is a legal entity and not a human person should have no bearing in your consideration of the case. You must consider the rights and the liability of the parties here involved in the same manner as you would if the action was between two individuals.

I will now read certain instructions which have been asked by the plaintiffs, and allowed by the Court. When I have concluded the reading of plaintiffs' instructions I

shall read certain instructions which have been asked by the defendant, and granted by the Court. With respect to these instructions for the plaintiffs, and for the defendant, you are told that they constitute the law of the case in so far as they go, in the same manner and with the same force as if given by the Court upon the Court's own motion and without request.

Plaintiffs' Instruction No. 1 reads as follows:

The Court instructs the jury that on May 29, 1947, the following traffic regulations of the District of Columbia were in full force and effect:

164 "Section 28. Right of way between vehicles.

"(a) A vehicle approaching an intersection shall slow down and be kept under such control as to avoid colliding with pedestrians or vehicles.

"(b) At any point at which an official 'Stop' sign has been erected all vehicles shall come to a complete stop and shall yield to other vehicles within the intersection or approaching so closely thereto as to constitute an immediate hazard, but said driver having so yielded may proceed and other vehicles approaching the intersection shall yield to the vehicle so proceeding into or across said intersection."

Plaintiffs' Instruction No. 2:

On May 29, 1947, the following traffic regulation of the District of Columbia was in full force and effect:

"Section 22. Restrictions as to speed.

"(b) No person shall drive a vehicle upon a highway at a greater speed than is reasonable and prudent having due regard to the traffic, surface, and width of the highway, and the hazard at intersections, and any other conditions then existing.

"(c) The speed of any vehicle on any street, highway, or bridge in the District of Columbia shall not exceed 25 miles per hour, except as hereinafter specifically provided, or as may otherwise be indicated by official signs."

165

Plaintiffs' Instruction No. 4 reads as follows:

In this case, it is admitted that the defendant owned the truck which was involved in the accident in question and that at the time of the accident, the driver was its agent and was driving the truck with the consent of the defendant. The law provides that when the owner of a motor vehicle expressly or impliedly gives his permission to another to use the vehicle, any negligence on the part of the person so using it shall be imputed to the owner for all purposes of civil damages.

Plaintiffs' Instruction No. 6:

If, under the Court's instructions, you find plaintiff Catherine E. Wells entitled to a verdict, you will consider in fixing the amount of the award, the elements of damage that I am now about to mention.

The reasonable value of the time lost by said plaintiff since her injury wherein she has been unable to pursue her occupation. In determining this amount, you should consider evidence of said plaintiff's earning capacity, her earnings, and the manner in which she ordinarily occupied her time before the injury, and find what she was reasonably certain to have earned in the time lost had she not been disabled.

If, under the Court's instructions, you find said plaintiff entitled to a verdict, you will consider not only the
166 elements of damage heretofore mentioned, but you will award her also such sum as will reasonably compensate her for the pain, discomfort and mental anguish suffered by her and proximately resulting from the injury in question, and for such pain, discomfort and mental anguish, if any, as she is reasonably certain to suffer in the future from the same cause.

If you find that the plaintiff Joseph G. Wells is entitled to recover damages by this action, you shall award him a sum which will reasonably compensate him for any expenses of medical treatment and hospital care which he may have been required to incur on account of his wife's injury.

You will also award him such sum as will reasonably compensate said plaintiff Joseph G. Wells for damage to his automobile. That sum is equal to the amount necessarily expended to repair said automobile.

You shall also award him a sum that will compensate him reasonably for any loss of his wife's services that he has suffered as a proximate result of the accident in question.

In determining that amount, you may and should consider, as shown by the evidence, the character and conditions of the home wherein plaintiffs have dwelled, the services, comfort, fellowship, aid and assistance that have been performed by the wife in the management of that household.

The services rendered by a wife to her husband's benefit may be, and often are, of such character that no
167 witness can say what they are worth.

Plaintiffs' Instruction No. 7 reads as follows:

If you find for the plaintiffs you are instructed to fix separately the damages, if any, suffered by each, and in your verdict to separately award to each or either of them the sum to which you shall have found him or her entitled.

Plaintiffs' Instruction No. 8:

The plaintiffs in this case rely upon a doctrine which is known as the last clear chance. You need not concern yourself with this doctrine unless and until you first shall have found that in the evidence leading up to the accident in question both the plaintiffs and the defendant were guilty of negligence. Should you find this to be the fact, then the doctrine of last clear chance may be invoked if you further find from the evidence that the following four elements existed:

1. That the plaintiff, Catherine E. Wells, was in a position of danger.
2. That the plaintiff, Catherine E. Wells, was unable to extricate herself from her position of danger.

3. That the driver of defendant's vehicle was aware, or by the exercise of reasonable care should have been aware, of plaintiff's danger and inability to extricate herself from danger.

4. The driver of defendant's vehicle with the
168 means available to him was able to avoid striking the plaintiff after he became aware, or should have become aware of her danger and inability to extricate herself from danger, and failed to do so.

If under the instructions I have given you, you find it is appropriate to consider the doctrine of last clear chance, and if you further find that each of the four elements existed with respect to the accident in question, then the negligence of the plaintiff would not bar her from recovery.

Plaintiffs' Instruction No. 9:

Every person using a public highway must exercise ordinary care at all times to avoid colliding with other persons, who also are using the highway, and to avoid placing himself or others in danger; and while he may assume that others will exercise due care and obey the law, he may not, for that reason, omit any of the care which the law demands of him.

Plaintiffs' Instruction No. 11:

The burden is upon the plaintiffs to prove by preponderance of evidence that a defendant was negligent and that such negligence was a proximate cause of injury to the plaintiffs. If plaintiffs have not fulfilled this burden, the defendant is entitled to your verdict, and you need not consider the issue of contributory negligence. If, however, plaintiffs have fulfilled this burden as against the
169 defendant, they are entitled to recover unless the defense of contributory negligence has been established under the Court's instructions. To establish this defense, the burden is upon the defendant to prove by a preponderance of evidence that the plaintiff, Catherine E. Wells, was negligent and that such negligence

contributed in some degree as a proximate cause of the injury. If this burden has been fulfilled, the defendant is entitled to your verdict. If not fulfilled, your decision on the issue of contributory negligence must be in plaintiffs' favor.

Plaintiffs' Instruction No. 12:

In this case, if you find and believe from the evidence that Mrs. Catherine E. Wells stopped at the stop sign on Third Street, and that if she did so at a time when there was no motor vehicle approaching on E Street, which was near enough, if such vehicle were operated properly and at a lawful rate of speed, to make it unsafe for her to cross, then she had a legal right to proceed. If the collision involved in this case then resulted because of the reckless and negligent operation of defendant's truck, if you find from the evidence that the truck was in fact operated negligently, then the defendant is liable, and your verdict should be for the plaintiffs.

I now have before me certain instructions asked by the defendant and granted by the Court.

Defendant's Instruction No. 1:

The mere fact that an accident happened, considered alone, does not support an inference that some party, or any party, to this action was negligent.

Defendant's Instruction No. 2:

You must weigh and consider this case without regard to sympathy, prejudice, or passion for or against either party to the action.

Defendant's Instruction No. 3:

The jury is instructed that no presumption of negligence whatever arises from the mere happening of the accident in this case. On the contrary, the legal presumption is that reasonable care was exercised by the defendant operating the truck. The burden of proof is upon the plaintiffs to overcome this presumption of due care on the part of the defendant and to prove by a preponderance of the evidence that the defendant was guilty of negligence and

that such negligence was the proximate cause of the accident.

Defendant's Instruction No. 4:

Negligence is the doing of some act which a reasonable prudent person would not do, or the failure to do something which a reasonably prudent person would do actuated by those considerations which ordinarily regulate the conduct of human affairs. It is the failure to use ordinary care in the management of one's property or person.

Defendant's Instruction No. 5:

The proximate cause of an injury is that cause
171 which, in natural or continuous sequence, unbroken
by any efficient intervening cause, produces the injury, and without which the result would not have occurred. It is the efficient cause—the one that necessarily sets in operation the factors that accomplish the injury. This does not mean that the law seeks and recognizes only one proximate cause of injury, consisting of only one factor, one act, one element of circumstance, or the conduct of only one person. To the contrary, the acts and omissions of two or more persons may work concurrently as the efficient causes of an injury or an accident from which injury flows, and in such a case each of the participating acts or omissions is regarded in law as a proximate cause.

Defendant's Instruction No. 6;

The party who asserts the affirmative of an issue must carry the burden of proving it. Such burden of proof is established by a preponderance of the evidence, which is determined not alone by the greater number of witnesses testifying to a particular state of facts. It means that the testimony on behalf of the party carrying the burden must have greater weight in your estimation, have a more convincing effect than that opposed to it. If you believe that the testimony on any essential point is evenly balanced, then your finding as to that point must be against the party carrying the burden of proof.

Defendant's Instruction No. 7:

Contributory negligence is negligence on the part
172 of a person injured which, combining in some degree with the negligence of another, helps in proximately causing the injury of which the former complains.

One who is guilty of contributory negligence may not recover from another for the injury suffered. (The reason for this rule of law is not that the fault of one justifies the fault of another, but simply that there can be no apportionment of blame and damages among the participating agents of causation.)

Contributory negligence as it has been defined connotes negligence on the part of both the plaintiff and defendant combining to proximately cause the injury. Not only is the plaintiff precluded from recovery if she is guilty of contributory negligence, but the plaintiff may not recover if the injury was the proximate result of her sole negligence.

Defendant's Instruction No. 8:

The law does not permit you to guess or speculate as to the cause of the accident in question. If the evidence is equally balanced on the issue of negligence or proximate cause, so that it does not preponderate in favor of the party making the charge, then she has failed to fulfil her burden of proof and your verdict must be for the defendant.

Defendant's Instruction No. 9:

The issues to be determined by you in this case are these:

First: Was the defendant negligent?

173 If you answer that question in the negative, you will return a verdict for the defendant. If you answer in the affirmative, you have a second issue to determine, namely:

Was that negligence a proximate cause of any injury to the plaintiff Catherine E. Wells?

If you answer that question in the negative, plaintiff

is not entitled to recover, but if you answer it in the affirmative, you then must find on a third question:

Was the plaintiff Catherine E. Wells negligent?

If you find that she was not, after having found in her favor on the other two issues, you then must fix the amount of the plaintiffs' damages and return a verdict in their favor.

If you find that plaintiff Catherine E. Wells was negligent, you then must determine a fourth issue, namely:

Did that negligence contribute in any degree as a proximate cause of the accident?

If you find that it did, your verdict must be for the defendant, but if you find that it did not, and you previously have found that there was negligence on the defendant's part which proximately caused plaintiff Catherine E. Wells' injury, you then must fix the amount of the plaintiffs' damages and return a verdict in their favor.

As indicated in this instruction, you should first determine the question of liability.

Defendant's Instruction No. 10:

174 The jury is instructed that when the plaintiff approached the stop sign controlling northbound traffic on Third Street it was her duty to come to a complete stop in obedience to such sign. Should you find that she failed to stop completely as required by the traffic regulations you are instructed as a matter of law that such a violation of the traffic regulations is negligence, and should you find that such negligence was the proximate cause of the accident then your verdict must be for the defendant.

You are further instructed that when the plaintiff was at a standstill at the stop sign, should you so find that she did stop, it became her duty to exercise reasonable care as measured by common sense and traffic regulations, to observe moving traffic and yield the right of way to traffic not only within the intersection but also to any vehicle approaching the intersection on the favored street

which would constitute an immediate hazard, which means a vehicle so close to the intersection should it continue with undiminished speed and should the unfavored vehicle start, the two would reach the point where their paths would converge at approximately the same time.

If you find from the evidence that the plaintiff left the stop sign and attempted to cross the street in front of oncoming traffic, of which she was aware or should have

175 been aware had she observed properly and effectively, and such oncoming traffic constituted an immediate hazard such as I have defined to you, then you should find that she was negligent and that such negligence was the proximate cause contributing to this accident, or the sole cause of this accident and your verdict should be for the defendant.

You are further instructed the duty of the plaintiff when at the stop sign was not merely to look but she was required to look observantly and with effect and if you find that she failed to see what the evidence conclusively shows was there to be seen, the law declares her negligent or contributorily negligent and bars recovery for her injuries and your verdict must be for the defendant.

Defendant's Instruction No. 12:

At times throughout the trial the Court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. With such rulings and the reasons for them you are not concerned. Whether offered evidence is admissible is purely a question of law, and from a ruling on such a question you are not to draw any inference as to what weight should be given to the evidence, or as to the credibility of a witness. In admitting evidence, to which an objection is made, the Court does not determine what weight should be given such evidence. As to any offer of evidence that was rejected by the Court, you, of course, must not con-

sider the same. As to any question to which an
176 objection was sustained, you must not conjecture
as to what the answer might have been or as to
the reasons for the objection.

The law makes the jury the sole judges of the weight of the evidence, and the credibility of the several witnesses who have appeared before you. You should accord to individual witnesses and to the testimony given by them that degree of credit and effect which in your honest judgment you think they ought to have, taking into consideration, so far as you are able to do so, the manner and appearance of the witness on the stand and whether the testimony of the witness be honestly and frankly given. Also you may take into account what, if any, interest, a witness has in the outcome of the case, and whether on that account the witness has colored in any way the facts related in the testimony of the witness.

When you return you will be asked for your verdict, first, how you find for the plaintiff Catherine E. Wells. If your verdict be in her favor then you will be asked for your verdict as to her husband Joseph G. Wells.

If you find that the plaintiffs have not carried the burden of proof, as required by the instructions of the Court, then your verdict will be for the defendant.

Likewise, even though you find that the plaintiffs have sustained the burden of proof that is placed upon them, then if you also find that the defendant has carried the
burden of proof in the affirmative defense of con-
177 tributory negligence, then your verdict must be for
the defendant.

The jury will take the case and deliberate upon their verdict.

No. 10,541

BRIEF FOR APPELLANTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

CATHERENE E. WELLS and JOSEPH G. WELLS,
Appellants,

vs.

GRAND UNION EQUIPMENT COMPANY, a corporation,
Appellee.

**Appeal from the United States District Court
for the District of Columbia**

United States Court of Appeals

For the

District of Columbia Circuit

FILED MAR 27 1950

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,541

CATHERENE E. WELLS and JOSEPH G. WELLS,
Appellants,

VS.

GRAND UNION EQUIPMENT COMPANY, a corporation,
Appellee.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANTS

Jurisdictional Statement

The plaintiffs appeal from a final judgment of the United States District Court for the District of Columbia entered upon a jury's verdict. Jurisdiction of the case was granted to the lower court by Section 301, Title 11, District of Columbia Code, 1940. Jurisdiction of this appeal is granted to this Court by Section 1291, Title 28, United States Code.

Statement of Facts

Mrs. Catherine E. Wells was seriously injured¹ when an automobile owned by her husband, Joseph G. Wells, which Mrs. Wells was driving, was struck by a truck belonging to defendant, Grand Union Equipment Company. This accident occurred at the intersection of Third and E Streets, S. E., in the District of Columbia, on May 29, 1947, at about 6:40 P. M.

This action was instituted to recover damages for the injuries suffered by Mr. and Mrs. Wells as a result of the accident.

Three eyewitnesses to the accident testified. They were Mrs. Wells, the driver of the truck, Robert McLean, and the driver's helper, Purvis Smith. There was a diametric inconsistency between the testimony of Mrs. Wells and that of McLean and Smith.

Certain physical facts concerning the accident were testified to by the traffic officer who investigated the accident, D. E. Huffman. There is no dispute with reference to these facts. Third Street is a north and south street and is thirty feet wide. (App., p. 30) E Street is an east and west street forty-two feet wide. (App., p. 31) The point of impact between the two vehicles was twenty feet east of the west curb of Third Street and twenty feet north

¹ Since the extent of the injury is not an issue here, the evidence relating to the injuries is not set forth in the transcript nor in the appendix. Plaintiffs claimed, and their claim was supported by medical evidence, that Mrs. Wells suffered a miscarriage as the result of the accident, as well as other injuries. We do not understand the defendant to challenge that a miscarriage occurred. However, the defendant at the trial challenged the causal relation between the accident and the miscarriage. Counsel for the parties have agreed that the fact that the evidence relating to the injuries has not been included in the transcript is not to be regarded as a waiver of defendant's assertion that there was no causal relation between the accident and the miscarriage, nor of plaintiffs' assertion that such a causal relationship existed.

of the south curb of E Street. (App., pp. 31, 32) The Wells car was struck at the left front door, and the damage to the truck was on the left front fender and radiator. (App., p. 32)

Mrs. Wells testified that prior to the accident, she was going north on Third Street. (App., p. 13). She was going slowly, probably not more than fifteen miles an hour, because she was looking for a parking place, as she wished to visit her father, a patient at Providence Hospital. (App., p. 13) As she approached E Street, she observed a stop sign, (App., p. 13) which was about twenty feet back of the curb line of E Street. (App., p. 14) She stopped at this stop sign and put her car in low gear. (App., p. 14) From this point, she could observe E Street to the west for a distance of one hundred fifty feet, (App., p. 14), a distance which she identified with reference to the entrance to Providence Hospital. (App., p. 14)² She looked to the left and saw no vehicles in the portion of E Street which she could observe, (App., p. 14), and then she looked to the right and saw no cars. (App., p. 14) She then proceeded into the street, and as she entered the street, she looked to the left again. (App., p. 14) When she looked at this time, she saw the truck, not very far from her and coming very fast. (App., p. 15). She was afraid that she would be hit and attempted to avoid the collision by increasing her speed to get out of the way of the truck. (App., pp. 15, 16) Mrs. Wells started from the stop sign in low gear, and shifted to second as she entered the intersection. Her speed could not have exceeded ten miles per hour. (App., p. 16). When the collision occurred, she was thrown out of the right hand door of the car. (App., p. 16). The truck was going very fast, at least thirty miles an hour. (App., p. 26)

² The entrance referred to is the emergency entrance to the hospital which is located on E Street. (App., p. 17, 18). Providence Hospital occupies the block lying between Second and Third, E and D Streets, in Southeast Washington.

Robert McLean, the driver of the truck, testified that he was returning to the warehouse, traveling east on E Street. (App., p. 35) He was in the right hand lane of traffic. As he entered the intersection about two feet, Mrs. Wells came out, and he applied the brake and stopped before he reached the center of the intersection. (App., p. 36)³ When he first saw the Wells car, it was crossing the curb line of E Street. (App., pp. 36, 37) As he approached Third Street, he slowed down and looked to the right and did not see anything. (App., p. 37) He estimated the speed of the car at thirty-five to forty miles an hour. He said that the car "wasn't stopped for the stop sign" and did not slow down. (App., p. 38)⁴ McLean said he slowed down about twenty feet before he reached the curb line of Third Street, (App., p. 41), from which point he could see for a distance five feet beyond the stop sign. (App., p. 42) The Wells car travelled at the same speed all the distance he observed it. (App., p. 45)

The helper, Purvis Smith, testified that the truck was traveling east on Third Street (App., p. 49). When he first saw the Buick, the truck was ten or fifteen feet back of the intersection, and the Buick had not reached the stop sign, and was traveling thirty to thirty-five miles an hour. (App., p. 50) The car did not stop at the stop sign. (App., p. 50) He saw that Mrs. Wells was not going to stop just as the truck entered the intersection. (App., p. 50)

³ The incredible character of this testimony is apparent when it is considered that the traffic officer fixed the point of impact as being twenty feet east of the west curb of Third Street. (App., p. 31) Third Street is thirty feet wide, and the truck proceeded five feet beyond the center line of Third Street, where it struck the Wells automobile.

⁴ This testimony should be compared with that of the same witness on cross-examination, in which he admitted that at the time he first saw the Wells car, it was at a point nearer to the intersection than the stop sign. (App., p. 41).

It will be seen that this evidence supported only one of two explanations of this accident:

- (1) That Mrs. Wells had stopped at the stop sign, and was crossing E Street at a slow rate of speed, when she was struck by the defendant's truck which was being driven at an illegal and excessive speed, or
- (2) That Mrs. Wells, traveling at an excessive rate of speed, ignored the stop sign, and was struck by the defendant's truck, which was being driven lawfully.⁵

With the evidence in this posture, the trial court misdirected the jury by giving Defendant's Instruction No. 10, which was not only a misstatement of the evidence on the single issue of fact upon which liability depended, but was

⁵ This explanation is totally inconsistent with the undisputed physical facts of the accident. The Wells car traveled slightly farther into the intersection than did the truck. If McLean's testimony is accepted, the truck traveled at least twenty feet from the point at which he first saw the Wells car, and Mrs. Wells traveled approximately the same distance. It would require about three quarters of a second for a car to travel twenty feet at the rate of twenty miles an hour. During this interval of time, a car proceeding at thirty-five miles an hour would travel about forty feet, and if McLean's testimony is correct, Mrs. Wells would have cleared the south half of the intersection. On the other hand, if Smith's testimony is accepted, the Wells car traveled about forty feet to the point of impact and the truck went approximately the same distance. In the three quarters of a second it would require for a car to travel forty feet at the rate of thirty five miles an hour, a car traveling twenty miles an hour would go only twenty feet, and again Mrs. Wells would have cleared the intersection before the collision could take place.

The authorities hold that evidence which is clearly at variance with the undisputed physical facts has no probative value. *Rice v. United States*, ... U. S. App. D. C., 179 F. 2d 26; *Blackley v. Powell*, 68 F. 2d 457, 459 (CCA 4, 1934); *Elzig v. Gudwagen*, 91 F. 2d 434, 440 (CCA 8, 1937); *Galloway v. United States*, 130 F. 2d 467, 471 (CCA 9, 1942), *affirmed*, 319 U. S. 372, 87 L. Ed. 1458, 63 S. Ct. 1077; *Chambers v. Skelly Oil Co.*, 87 F. 2d 853, 856 (CCA 10, 1937).

a positive misstatement of the law which governed the relative duties and rights of the drivers under the circumstances presented.

Regulations Involved

Traffic and Motor Vehicle Regulations for the District of Columbia, Part I, Rules of the Road:

Section 28. Right-of-Way Between Vehicles

- (a) A vehicle approaching an intersection shall slow down and be kept under such control as to avoid colliding with pedestrians or vehicles.

* * * *

- (b) At any point at which an official "Stop" sign has been erected all vehicles shall come to a complete stop and shall yield to other vehicles within the intersection or approaching so closely thereto as to constitute an immediate hazard, but said driver having so yielded may proceed and other vehicles approaching the intersection shall yield to the vehicle so proceeding into or across said intersection.

Section 22. Restrictions as to Speed.

- (b) No person shall drive a vehicle upon a highway at a greater speed than is reasonable and prudent having due regard to the traffic, surface, and width of the highway, and the hazard at intersections, and any other conditions then existing.
- (c) The speed of any vehicle on any street, highway, or bridge in the District of Columbia shall not exceed 25 miles per hour, except as hereinafter specifically provided, or as may otherwise be indicated by official signs; * * *

Statement of Points

1. The trial court, in the light of the evidence, erred in instructing the jury in accordance with Defendant's Instruction No. 10, because that instruction misconceived the controlling traffic regulation by requiring Mrs. Wells to

yield the right-of-way to the truck even though the jury found that the truck was proceeding at an illegal and excessive speed. The instruction also erroneously told the jury that the evidence conclusively showed that Mrs. Wells could have seen the truck.

Summary of Argument

The accident from which this suit arose could, under the evidence, have occurred in but one of two ways. The plaintiffs' evidence clearly supported the theory that Mrs. Wells stopped at the stop sign, and after observation, determined that no vehicle was close enough to the intersection to constitute "an immediate hazard." Under such circumstances, the regulation authorized Mrs. Wells to proceed across E Street, and required the driver of the truck to yield the right-of-way to her and permit her to cross safely. However, because the truck was being operated at an illegal speed, it was impossible for Mrs. Wells to observe it until too late to avoid the accident.

Defendant's Instruction No. 10, which the Court gave despite the objections of plaintiffs, (App., pp. 61, 62) defined "an immediate hazard" as "a vehicle so close to the intersection should it continue with undiminished speed and should the unfavored vehicle start, the two would reach the point where their paths would converge at approximately the same time." (App., p. 73). This definition was incorrect because it omitted the necessary element that the approaching vehicle must be operated at a legal speed and with due care. By omitting this element, the court placed upon Mrs. Wells the impossible duty of foreseeing the defendant's violation of law, and of observing a danger which existed only because it was created by the illegal operation of the truck. The interpretation of the regulation adopted by the court is unsound because, by making the unfavored driver cross a thoroughfare at his own peril, even though the danger could not be observed because of the failure on the part

of the other driver to obey the regulations and to exercise due care, a duty is imposed on the unfavored driver which is much higher than that of reasonable care. So interpreted, the regulation virtually prohibits any movement of traffic across arterial highways, since at almost no time or place in Washington could such a street be crossed without some risk of illegal operation by some other driver.

Furthermore, the Court, by adopting defendant's instruction, made a finding of fact on the crucial issue in the case: whether, Mrs. Wells, in the exercise of reasonable care, could have seen the approaching truck. The plaintiffs' evidence showed that the defendant's truck was not within Mrs. Wells' range of vision and reached the point of impact only because it was being driven at an illegal speed.

ARGUMENT

- I. The Trial Court Erred in Giving Defendant's Instruction No. 10 Because That Instruction Erroneously Defined "An Immediate Hazard" and Because It Stated That the Evidence Was Uncontroverted That Mrs. Wells Should Have Seen the Truck When, in Fact, There Was Evidence to Show That She Could Not See It Because of the Illegal Manner in Which the Truck Was Operated.**

As we have pointed out (*supra*, note 5) the defendant's evidence was at variance with the undisputed physical facts and, therefore, inherently incredible. The jury's verdict was, at best, supported by a mere scintilla of the evidence. The jury's apparent acceptance of the defendant's inherently improbable testimony was induced by the errors of law in the Court's charge to the jury.

In the charge, the Court, at the instance of the defendant, and over the objections of the plaintiffs, instructed

the jury as follows (Defendant's Instruction No. 10, App., pp. 72, 73):

The jury is instructed that when the plaintiff approached the stop sign controlling northbound traffic on Third Street it was her duty to come to a complete stop in obedience to such sign. Should you find that she failed to stop completely as required by the traffic regulations you are instructed as a matter of law that such a violation of the traffic regulations is negligence, and should you find that such negligence was the proximate cause of the accident then your verdict must be for the defendant.

You are further instructed that when the plaintiff was at a standstill at the stop sign, should you so find that she did stop, it became her duty to exercise reasonable care as measured by common sense and traffic regulations, to observe moving traffic and *yield the right of way to traffic not only to traffic within the intersection but also to any vehicle approaching the intersection on the favored street which would constitute an immediate hazard, which means a vehicle so close to the intersection should it continue with undiminished speed and should the unfavored vehicle start, the two would reach the point where their paths would converge at approximately the same time.*

If you find from the evidence that the plaintiff left the stop sign and attempted to cross the street in front of oncoming traffic, of which she was aware or should have been aware had she observed properly and effectively, and such oncoming traffic constituted an immediate hazard such as I have defined to you, then you should find that she was negligent and that such negligence was the proximate cause contributing to this accident, or the sole cause of this accident and your verdict should be for the defendant.

You are further instructed the duty of the plaintiff when at the stop sign was not merely to look but she was required to look observantly and with effect and if you find *that she failed to see what the evidence conclusively shows was there to be seen, the law declares her negligent or contributorily negligent and*

bars her recovery for her injuries and your verdict must be for the defendant.

—[Emphasis supplied]

This instruction was an incorrect statement of the law, and, in view of the evidence, was an error which went to the very heart of the issue. The fault of the instruction was two-fold: (1) it incorrectly defined "an immediate hazard," and (2) it told the jury that the evidence conclusively showed that when Mrs. Wells was stopped at the stop sign, she should have seen the truck, and therefore directed them to return a verdict for the defendant. In this respect, it misstated the evidence, which presented a matter for the jury's determination.

We discuss each of these faults in the succeeding paragraphs.

- (A) *Defendant's Instruction No. 10 incorrectly defined "an immediate hazard" because it excluded from the jury's consideration the fact that defendant's truck was being operated illegally.*

The testimony on behalf of the plaintiffs was, as we have said, that Mrs. Wells stopped at the stop sign on Third Street, from which point she could observe E Street for a distance of one hundred fifty feet to the left, and that, at that time, she saw no car in the area. When she did see the truck, just as she entered E Street, it was coming very fast, and was about forty feet away.

The questioned instruction was faulty because it did not tell the jury that the favored vehicle was entitled to preference only if it were being driven in accordance with traffic regulations. Under the instruction as given, the jury could have found that a vehicle being operated at a grossly excessive speed, or in any other manner in violation of the traffic regulations, would nevertheless constitute "an immediate hazard" and that it would, therefore, have the right of way under the regulation. In the case at bar, if the defendant's truck were going thirty-five

miles an hour, it would travel 51.3 feet per second. In the approximately three seconds it required for Mrs. Wells to drive the forty feet from the stop sign to the point of impact at ten miles an hour, or 14.7 feet per second, the defendant's truck would travel one hundred fifty four feet. It follows, then, that at the time Mrs. Wells left the stop sign, the truck was just beyond the range of her vision, and it was impossible for her to see it. However, any car traveling not in excess of the speed limit of twenty-five miles an hour would not constitute "an immediate hazard" because in the same three seconds, it would travel only one hundred eight feet, and could not possibly reach the intersection in time to interfere with Mrs. Wells' crossing E Street.

The Court's instruction, accordingly, put upon Mrs. Wells the impossible burden of discovering a danger which existed solely because of the defendant's negligence, and which she could not discover because the defendant's negligence in violating the speed limit was the sole source of that danger. When Mrs. Wells stopped at the traffic marker, she was entitled to assume that any other persons using the street would do so in compliance with all of the applicable traffic regulations. *American Ice Co. v. Moorehead*, 62 App. D. C. 266, 66 F. 2d 792; *Hassenplug v. Victor Lynn Limes, Inc.*, 170 F. 2d 519 (CCA 4, 1948); *Autrey v. Swisher*, 155 F. 2d 18 (CCA 5, 1946); *Blodgett v. Pinkerton Tobacco Co.*, 79 F. 2d 945 (CCA 6, 1935); *Nielsen v. Richman*, 114 F. 2d 343 (CCA 8, 1940, *cert. denied*, 311 U. S. 705, 85 L. Ed. 458, 61 S. Ct. 172. Unless a driver could make such an assumption, it would be impossible for traffic to proceed across arterial highways, since otherwise the driver on the unfavored street would be required, at his peril, to discover the approach of another vehicle, no matter what the negligence of the other driver might be. For instance, a driver approaching a stop sign at night would be required to discover an approaching vehicle even though it were being driven without lights, or at a

speed of even sixty miles an hour and hidden by an obstruction two or three hundred feet away, or indulging in any other violation of law which would be the sole or only cause of the collision.

The single question posed by this appeal is: When a driver at a favored street is proceeding at an unlawful rate of speed, or otherwise violating the law of the road, does an unfavored driver who does not see him because of such violation—although the unfavored driver could and would see any automobile which, if proceeding lawfully, would be a hazard—have a right, under Section 28 of the Traffic Regulations, to proceed across the through street, and does that section give the unfavored driver under such circumstances, a right of way?

This Court has never answered this question in this precise form. However, its decisions in apposite instances point unerringly to an affirmative answer, and upon reason and authority, only an affirmative answer is possible.

In determining the relative rights and duties of drivers under a Maryland statute which gives the right of way to any driver "approaching" on the favored highway, a statute which imposes an obviously greater burden on the unfavored driver than that created by Section 28, this Court determined that the unfavored driver could not be held guilty of contributory negligence where he failed to discover the approach of the favored vehicle because of its excessive speed. In *Standard Oil Company of New Jersey v. Sheppard*, 80 U. S. App. D. C. 71, 148 F. 2d 363, the Court said (80 U. S. App. D. C. at p. 72, 148 F. 2d at p. 364):

The statute does not impose upon the unfavored driver the impossible duty of yielding to vehicles the approach of which he cannot discover by making the required stop and using care.

In *Bland v. Hershey*, 60 App. D. C. 226, 50 F. 2d 991, in construing a traffic regulation which gave the right-of-way to a vehicle approaching from the right, this Court

emphasized the relative and non-absolute character of a right-of-way, and said (60 App. D. C. at p. 227, 50 F. 2d at p. 992):

The driver on the left when arriving at a crossing must look to the right to see whether any approaching vehicle is near enough to prevent him from safely proceeding across. In most parts of the city it is practically certain that some such approaching cars will be in sight, but if none is near enough, if properly operated, to make it unsafe for the left hand car to cross, it may rightfully do so. If a collision then results because of the reckless and negligent driving of the right-hand operator, the latter is liable and cannot defend upon the ground of contributory negligence.

The Courts are uniform in holding that in determining whether an approaching vehicle constitutes "an immediate hazard" it is necessary to determine whether or not that vehicle is being driven lawfully, and if it is not, the unfavored driver has a right to proceed. *Autrey v. Swisher*, 155 F. 2d 18 (CCA 5, 1946); *Washam v. Peerless Automatic Staple Machine Co.*, 45 Cal. App. 2d 174, 113 p. 2d 724; *Fisher v. Wichita Transportation Co.*, 156 Kan. 500, 134 P. 2d 393; *Rouleau v. Blotner*, 84 N. H. 539, 152 A. 916. All of these cases define "an immediate hazard" as necessarily implying that the favored vehicle is proceeding lawfully and that its driver is himself in the exercise of due care.⁶

⁶ *Brown v. Clancy*, D. C. Mun. App. 1945, 42 A. 2d 296, from the language of which the challenged instruction was taken, and upon which the defendant relied in the lower court, has no application to the present case. There, the undisputed evidence was that the defendant was proceeding at a lawful rate of speed, and no claim of any unlawful driving on his part was made. The only eyewitness to the accident, who was called by the plaintiff, testified that defendants' car was approximately fifty feet from the point of impact when the plaintiff left the stop sign. The plaintiff admitted that his vision was unobstructed for a distance of two hundred fifty feet. The sole question presented to the Court was the effectiveness of the plaintiff's observation of the situation.

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In *Autrey v. Swisher, supra*, the Court said (155 F. 2d at p. 21):

. . . Even though the truck driver [who was making a left turn] may not have been able to judge the actual speed of Swisher's automobile at a distance of a quarter of a mile, the truck driver could act on the assumption that Swisher was not traveling at a speed greater than 25 miles an hour. * * * the truck driver could reasonably assume that Swisher was driving within the legal speed limit.

If Section 317.41 of the Florida Statutes Annotated⁷ was applicable, it gave the truck driver the right of way to make a left turn, and the failure of Swisher to yield the right of way to the truck driver was negligence, and this negligence was the proximate cause of the collision. Under the same circumstances, the driver of the truck was not negligent.

In *Washam v. Peerless Automatic Staple Machine Co.*, 45 Cal. App. 2d 174, 113 P. 2d 724, a similar result was reached. The Court said (113 P. 2d at p. 727):

The obligation which the statute⁸ imposes on the

⁷ This statute required that a person making a left turn at an intersection yield the right of way to any vehicle approaching from the opposite direction which was within the intersection or so near thereto as to constitute an immediate hazard.

The Court had doubts as to the applicability of the statute because the evidence left undetermined the question as to whether the place at which the accident occurred was an intersection of two public roads, or whether the road into which the truck driver was turning was a private lane.

⁸ Section 551, California Vehicle Code, provides: "The driver of a vehicle within an intersection intending to turn to the left shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver having so yielded and having given a signal when and as required by this code may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right of way to the driver making the left turn."

driver seeking to make a left turn is that he must see that he can make the turn in safety, but he may assume that all others using the same highway will exercise reasonable care. *Inouye v. Gilboy Co.*, 115 Cal. App. 25, 300 P. 385. In a case where the facts were similar to those of the case at bar, the court stated: "If another driver, by reason of his violation of a statutory provision, or by reason of other negligent conduct, collides with him, he is not chargeable with contributory negligence." *Hanson v. Cordoza*, 106 Cal. App. 500, 505, 290 P. 60, 64. A motorist about to turn left is not required to leave his car and scan the horizon or by trigonometric computations calculate yards distant of the approaching car to insure his own safety against a collision with one who ignores the law and the rights of others lawfully within the intersection. Such a construction would be unreasonable and entirely impracticable on busy thoroughfares.

So, in the present case, there was evidence to support a finding that Mrs. Wells stopped as the regulation required, looked, and saw no car within a distance of one hundred fifty feet. No car proceeding at a lawful rate of speed would constitute a hazard to her unless it were one hundred feet or less from the intersection. Under such circumstances, the regulation gave her the right of way, and required any other vehicle to yield the right of way to her. She had a right to assume that all others using the highway would proceed at a lawful rate of speed and would yield the right of way as the regulation required.

The court, by refusing to instruct that the question of the lawfulness of the defendant's operation of its truck was a necessary element in determining whether the truck constituted an "immediate hazard" placed upon Mrs. Wells the burden of discovering a danger which was created solely by defendant's negligence and unlawful conduct. Such a burden was an impossible one, and in this respect the instruction was clearly erroneous and obviously harmful to the plaintiffs.

- (B) *Defendant's Instruction No. 10 erroneously told the jury that the undisputed evidence showed that Mrs. Wells could have seen the truck from the stop sign. In this respect, the instruction misstated the evidence and constituted a directed verdict on the crucial issue of the case.*

The trial judge in a federal court has a right to comment on the evidence, but he must do so fairly and impartially, and any opinion as to the facts which he expresses must be given with care, so that it will not mislead the jury, and especially must it not be one-sided. *Starr v. United States*, 153 U. S. 614, 626, 38 L. Ed. 841, 845, 846; *Quercia v. United States*, 289 U. S. 466, 77 L. Ed. 1321, 53 S. Ct. 698; *Virginian Railway Co. v. Armentrout*, 166 F. 2d 400 (CCA 4, 1948). The duty of the judge in this respect was best stated, we believe, in *Burke v. Maxwell*, 81 Pa. 139, 153, the language of which was cited with approval by the Supreme Court in *Starr v. United States*, *supra*:

When there is sufficient evidence upon a given point to go to the jury it is the duty of the judge to submit it calmly and impartially. And if the expression of an opinion upon such evidence becomes a matter of duty under the circumstances of the particular case, great care should be exercised that such expression should be given so as not to mislead, and especially that it should not be one-side. The evidence, if stated at all, should be stated accurately, as well that which makes in favor of a party as that which makes against him; deductions and theories not warranted by the evidence should be studiously avoided. They can hardly fail to mislead the jury and work injustice.

Applying this fundamental rule to the case at bar, it becomes apparent that the trial judge did not follow its demands. Defendant's Instruction No. 10 stated to the jury (App., p. 73):

. . . the duty of the plaintiff when at the stop sign was . . . to look observantly and if you find that she failed to see what the evidence conclusively shows was there to be seen, the law declares her negligent . . . and your verdict must be for the defendant.

By this instruction, the Court told the jury that the evidence conclusively demonstrated that when Mrs. Wells stopped at the stop sign, the truck could be seen. In truth and in fact, there was no evidence to support such an instruction. Mrs. Wells positively testified that at the stop sign, she looked and did not see the truck. There was no evidence which would support a finding that she could have seen the truck. The defendant's theory was that the truck was proceeding at twenty miles an hour, and from this it deduces that the truck was close enough to the intersection to enable it to be seen. On the other hand, there was evidence to support a finding that the truck was proceeding at an unlawful rate of speed. The evidence supports, as a reasonable conclusion, the assertion that the reason Mrs. Wells did not see the truck was that it was traveling too fast and was not within the range of her vision when she stopped at the stop sign. The instruction, as given, directed the jury that it could not adopt this theory, and thereby instructed the jury that Mrs. Wells' testimony on this point was not to be believed. Since this was, in fact, the crucial fact issue of the case, the court's direction of a finding on this point was of the greatest possible harm to the plaintiffs' case. The statement was unjustified by the evidence, and it cannot be doubted that this one statement, alone, seriously misled the jury and rendered an impartial determination of the fact issues impossible.

CONCLUSION

As we have demonstrated, the giving of Defendant's Instruction No. 10 was a positive misdirection of the jury as to the law governing the case and was a clear misstatement of the evidence. It constituted error on the single issue which the jury had to determine. For that reason, the verdict is unsound, and the judgment should be reversed.

Respectfully submitted,

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No. 10,541

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

CATHERENE E. WELLS and JOSEPH G. WELLS,

Appellants

vs.

GRAND UNION EQUIPMENT COMPANY, a corporation,

Appellee

Appeal from the United States District Court
for the District of Columbia *United States Court of Appeals*
For the
District of Columbia Circuit

FILED APR 21 1950

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vs.

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Appellee

**Appeal from the United States District Court
for the District of Columbia**

BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

The appellee submits the following additions and corrections to the statement of the case filed by appellant as necessary to an equitable determination of the issues created herein. Certain physical facts are conceded as indicated by appellant except the description of the damage

to the truck of appellee and the point of impact on the truck. The police officer's testimony was that the greater amount of damage to appellee's truck was at the left front fender and left side of the radiator and that he believed the truck was also damaged on the right side (App. p. 32). In order to clarify this point, it should be noted that the driver of appellee's truck stated that the right front fender of the truck collided with appellant's vehicle (App. pp. 37 and 43). Further, the helper on appellee's truck, Purvis Smith, also describes the point of impact on the truck to be the right hand fender. (App. p. 50) The record is barren of any testimony to the contrary.

In appellant's statement of facts, it is stated as follows: "She then proceeded into the street, and as she entered the street, she looked to the left again (App. p. 14)." An examination of the reference reveals that Mrs. Wells did not look to her left as she entered the intersection but rather looked to her left for the second time when her entire automobile was already within the intersection (App. p. 14). Mrs. Wells repeats this admission on cross-examination (App. p. 25).

Mrs. Wells also testified that after her entire vehicle was within the intersection she observed the truck of appellee approximately 40 feet distant from the intersection and traveling in the middle of the street (App. p. 15). She admitted that after stopping at the stop sign (previously described to have been located at a point 20 feet south of the south curb line of E Street) and looking to her left and right, that she started her vehicle forward and continued the forward motion of that car up to the point where the accident occurred and that she had not stopped again nor caused any change in the motion of her car other than that accomplished in the shifting of gears from the time she left the stop sign until she accelerated the automobile just before the impact. (App. p. 18). When the truck was first seen by Mrs. Wells an accident was apparent (App. p. 18). There was nothing which obstructed the

view of Mrs. Wells to her left when her vehicle was at a standstill at the stop sign (App. p. 20). She estimated that her automobile had traveled a distance of approximately 10 feet after she first saw the truck until the accident occurred (App. p. 21). After admitting that the truck of the appellee was a fiery red truck having a large body she then testified that the position of the truck on the roadway was between the center and the right side rather than in the center as she had previously testified (App. p. 22). Then after having her recollection refreshed by a reading of a pre-trial deposition Mrs. Wells stated she would like to change her testimony with respect to the position of the truck. (App. pp. 22 and 23). Mrs. Wells admitted that the truck had stopped just about at the point where the accident occurred (App. p. 24). Mrs. Wells further testified that the 40 foot estimate of distance that she had previously made represented the distance between the two vehicles when she first noted appellee's truck (App. p. 26). Again after her recollection was refreshed as to the details of previous testimony at a pre-trial deposition she admitted the incorrectness of her testimony on direct and re-cross-examination and stated that the truck was a distance of 40 or 45 feet from the intersection when she first observed it and that the truck had traveled 60 to 70 feet while her vehicle traveled 10 feet to the point where the accident occurred (App. pp. 27 and 28). Mrs. Wells added that she could not estimate either the width or the length of her own vehicle (App. 20 and 25).¹

Robert McLane testified that as the truck which he was operating traveled east on E Street towards 3rd its speed was 20 to 25 miles per hour. (App. 39). That upon apply-

¹ It is readily apparent that using the estimates of distance and speeds testified to by appellant and employing the reasoning and argument contained in appellant's footnote 5 that this accident would never have occurred.

ing the brakes on the truck he swung the truck to the left and following the impact the truck was headed north on 3rd Street at an angle (App. pp. 37 and 44). He further testified that in view of the circumstances had he swung the truck to the right he would have struck the rear of the appellant's automobile (App. p. 43). The truck stopped in the center of the street near the manhole cover but the appellant's vehicle continued on from the point of impact, finally coming to rest near the east corner of 3rd Street on the sidewalk (App. p. 37). That the truck was actually angled towards the northeast corner of the intersection with about 5 feet of skid marks up to the point where the truck had stopped (App. p. 48).

Purvis Smith testified that he was seated in the right front of the van type red Reo truck which was traveling about 22 to 23 miles per hour and had slowed down as it approached the intersection (App. p. 49). That the appellant's automobile did not decrease its speed from the time he first observed it until the accident took place. That the truck in which he was riding swerved to the left and the brakes were applied prior to the accident with the truck stopping at the point of impact, headed at an angle and the private automobile jumped the sidewalk and continued to a point between a tree and a brick wall where it finally came to rest (App. pp. 50 and 51). He also testified that the rear end of the truck swung around as the impact occurred.

SUMMARY OF ARGUMENT

The jury verdict rendered in the trial Court resolved finally the conflicting testimony in favor of appellee. This verdict was a general verdict and appellant's speculations as to the final determination by the jury is not properly presented to this Court nor do those speculations create a question to be answered by this Court. The conclusions drawn by appellant as to the manner of the operation of

appellee's truck were matters for the consideration of the jury from all of the evidence and were submitted to the jury which ruled adversely to appellant.

The instruction of law designated here as defendant's instruction No. 10 represented a correct statement of the law as the instruction was premised upon evidence and presented to the jury the appellee's theory and version of the accident in question with respect to the defense of contributory negligence.

The charge of the trial judge to the jury considered as a whole, correctly, fully and fairly informs the jury of the law applicable to the issue involved. The trial judge informed the jury that it was their duty to determine from the evidence their verdict on the questions of fact. (App. 63). The jury was further instructed on the doctrine of last clear chance¹ (App. 67). Lastly, through the medium of plaintiff's instructions Nos. 9 and 12, the trial judge instructed the jury as to the obligation of due care on the part of all motorists and that if at the time the appellant stopped at the stop sign there were no motor vehicles near enough then, if the same were operated properly and at a lawful rate of speed, to make it unsafe for her to cross, then she had a legal right to proceed.

ARGUMENT

The appellee submits: (a) The judgment of the Lower Court was upon issues of fact beyond the review of this Court; (b) The trial Court correctly instructed the jury as to the applicable traffic regulations and their meaning in the light of the evidence; (c) The entire charge of the trial Court to the jury represented a full statement of the

¹ The injection of this doctrine into the case was over the objection of appellee but of course it is recognized that this is not at this point a matter for concern of this Court.

law and the theories of each of the parties as requested and justified by the evidence.

(a) At the outset it must be pointed out that appellant argues the physical facts, estimates of speed, credibility of witnesses and all of those other usual jury questions arising out of an automobile accident. In the course of argument appellant attempts to urge upon the Court that the vehicle of appellee was beyond the vision of appellant at the time she stopped at the stop sign. The reasoning is faulty for it is based upon the assumption that the appellee's truck was traveling 35 miles per hour. The only estimate of the speed of appellee's truck above the speed limit was made by appellant and the only figure given by her was the figure of 30 miles per hour. As pointed out previously, the employment of this same reason in the light of the testimony of appellant demonstrates not only that the accident would not have happened but at the very time her vehicle was at a standstill at the stop sign and assuming that the truck of appellee was traveling 30 miles per hour the same was well within her vision. Before leaving the testimony as to physical facts, it is noteworthy that appellant avoids mentioning of her own admission that from the time she started from a standstill at the stop sign located 20 feet south of the south curb line of E Street until her automobile was fully within this intersection, she did not again look to her left from which direction appellee's vehicle was approaching. The technical compliance with the regulation, if appellant did so comply, certainly did not eliminate further need of the exercise of care for her own safety. The condition of an intersection and the position of approaching vehicles can readily change in the period of time during which a motorist starts from a complete standstill and traveling not in excess of 10 miles per hour, travels the distance of 20 feet to the intersection and an additional complete automobile length into that intersection. In the case of *Standard Oil Company of New Jersey vs. Sheppard*, 80 U. S. App. D. C. 71, 148

Fed. 2nd 363 which is referred to in the brief of appellant, this Court concluded that the issues created therein were properly for determination of the jury and in discussing the right of way provision of the Maryland Statute employed the language referred to in appellant's brief.

The application of this very language to the conflicting testimony created in this litigation reveals certainly a jury question both as to the movement of the appellant's vehicle as it reached the stop sign and then whether its movement from that point forward constituted the use of due care on the part of its operator. Appellant also cites the case of *American Ice Company vs. Moorehead*, 62 App. D. C. 266, 66 Fed. 2nd 792 which case represented another instance of the submission of questions to a jury arising out of

"The usual amount of contradictory evidence as to the speed at which the truck was traveling at the time of the impact".

A recent decision of the Municipal Court of Appeals in the case of *Lewis v. Shiffers*, 62 A 2nd 269 contains a most appropos statement, readily applied to appellant's argument in this case. On page 271 of the opinion that Court stated,

"Automobile collisions at street intersections nearly always present questions of fact. The credibility of witnesses must be passed on, conflicting testimony must be weighed, and inferences must be drawn * * *. The evidence as to the relative speeds, the degree of visibility, opportunity to see and failure to see, opportunity to avoid the collision, violation of traffic ordinances, the point of impact and respective rights of way, all bearing directly on the existence or non-existence of negligence presented such a factual problem."

With the evidence in the state confronting the trial judge as apparent from the record herein there can be no serious question but that the issues were jury questions. *Brooks Transportation Company v. McCutcheon*, 80 U. S.

App. D. C. 406, 154 F. 2nd 841. It is not believed that appellant can dispute but that the submission of questions of fact to a jury and a resolving of those questions in favor of appellee precludes this Court from disturbing the jury's finding in this respect. *Lumbra vs. United States*, 290 U. S. 551, 553, 54 Sup. Ct. 272, 78 L. Ed. 492; *Gunning v. Cooley*, 281 U. S. 90, 94, 50 Sup. Ct. 231, 74 L. Ed. 720; *United States v. Ingalls*, 72 App. D. C. 383, 114 Fed. 2nd 839.

b. It is readily admitted by appellee that defendant's instruction No. 10 was as nearly as possible the language of the Municipal Court of Appeals for the District of Columbia in the case of *Brown v. Clancy*, 43 A. 2nd 296. The language was particularly applicable to the evidence in this case because of the presence of a stop sign in both cases and most importantly because of the failure of the motorist proceeding from the stop sign to observe the vehicle approaching on the favored street. The language of the instruction defining an immediate hazard is clear and unambiguous. This language, however, cannot be separated from the remaining portion of the instruction because it represents an overall and complete description and definition of the duties of a motorist who is confronted with a stop sign. The Municipal Court of Appeals cited numerous authorities for this definition of an immediate hazard and the obligation of effectual observation by a motorist and in its opinion pointed out that this Court had employed similar reasoning in its decision of *Faucett vs. Bergman*, 57 App. D. C. 290, 22 Fed. 2nd 718. In both the case of *Brown vs. Clancy*, cited Supra. and *Faucett vs. Bergman*, cited Supra. the Municipal Court of Appeals for the District of Columbia and this Court respectively held that the failure of effectual observations was such as to warrant a finding of contributory negligence as a matter of law. As the record herein demonstrates the trial judge refused to direct a verdict as a matter of law, though in the opinion of appellee the same was warranted

by the state of the evidence, and submitted the case to the jury. Apparently appellant relies extensively upon the case of *Autrey v. Swisher*, 155 Fed. 2nd 18 (C. C. A. 5, 1946). An examination of this case reveals that the Court in its opinion cites with approval the very definition contained in the decision of *Brown v. Clancy*, cited Supra, and as to which appellant complains. The reasonableness of the obligation placed upon the motorist on the unfavored street by the terms of this instruction is apparent—the actions prescribed by the terms of the instruction are insurance for his own safety. The remaining portion of the instruction to which appellant directs the attention of the Court by no interpretation directed a verdict on a crucial issue. In appellant's brief on page 17 a portion of the instruction is set out. The language of this instruction clearly recognizes the jury's right and function of determining the question of the effectiveness of appellant's observation. This constituted no usurpation of the jury's function by the trial judge but rather assisted in the application of the law in the event they should determine a certain version of the accident from all of the evidence. This Court in its decision in *Landfair vs. Capital Transit Company*, 83 U. S. App. D. C. 60, 165 F. 2nd 255, clearly speaks in similar language as employed in this instruction. In that case just as in this present litigation the motorist, appellant in this Court, had testified of looking prior to the execution of a "U" turn and failing to see an approaching street car. Just as in that case, there can be no question here but that under the applicable traffic regulations there was a duty to look and as pointed out by this Court at page 61 of its opinion,

"Under comparable circumstances this Court has previously rejected such testimony as that given by the appellant,"

(The testimony referred to was that of appellant to the effect that she had looked and saw no approaching traffic).

“Declaring contributory negligence on the part of the injured person as a matter of law.”

c. It is axiomatic that the charge to a jury must be read as a whole with the view of determining the impression conveyed thereby to the jury. *Danzansky v. Zimbo-list*, 70 App. D. C. 234, 105 F. 2nd 457. It is submitted by appellees that compliance with this rule of law as enunciated above clearly demonstrates that this verdict should not be disturbed. As pointed out in the summary of argument of this brief, an examination of the overall charge reveals that the jury was instructed on the law applicable to the doctrine of last clear chance, to their position as the sole triers of the facts, and to the law applicable should they find that the appellees' vehicle was operated unlawfully. Plaintiff's instruction No. 12 specifically charged the jury as to the rights of the appellant and that she was entitled to the jury's verdict should they find that the appellee's truck was being operated at an unlawful rate of speed. Appellant here complains in effect that this instruction should have been repeated at the time the Court read defendant's instruction No. 10. There certainly is no obligation on the part of a trial judge to keep repeating the same instruction nor to qualify the instructions advanced by the other side by a repetition of the language employed in previous instructions. Each party has a right to have the law stated correctly to the jury on the facts as he claims them to have been proved, where testimony has been given tending to sustain his view of the proof; and it is the duty of the Court, on request, to charge as to the law. *Douglass and Mandeville v. McAllister*, 7 U. S. (3 Cranch) 298, 2 Law Ed. 445, affirming (Cir. Ct. 1805); *McAllister v. Douglass and Mandeville* (1 Cranch) Cir. Ct. (1 D. C.) 241; *Metropolitan Life Insurance Company v. Adams*, 37 A. 2nd 345; *Fraser v. Crounse*, 45 A 2nd 757. The instruction complained of here falls squarely within this fundamental rule. Admittedly the instruction was drawn to place squarely before the jury something

more than a mere general definition of contributory negligence. That doctrine was one of the defenses relied upon by appellee. The jury understood their duty as the sole triers of the facts. Appellant commences her brief by stating that she was seriously injured in this automobile accident. It is submitted that the determination by a jury in a case of conflicting testimony and evidence wherein an injured party is claiming against a corporation warrants the inference and realization that all of those considerations which are properly for a jury were thoroughly exhausted before they would render a verdict against that injured party.

CONCLUSION

It is respectfully submitted that the Court should determine that an examination of the record herein presented conclusively demonstrates the lack of any prejudicial error and the judgment of the lower Court should be affirmed.

Respectfully submitted,

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